

ENVIRONMENTAL PROTECTION AND CONSTITUTION

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ABSTRACT

Law is the system of rules that essential for the smooth functioning of society. Smooth functioning doesn't shrink to crime free society. It also includes the protection of environment and surroundings. It is essential to insert provision of protection of environment. Now a days there is a rapid increases in deforestation, pollution and other forms of exploitation of environment. So It is necessary to prevent it. When we look about it in constitution we can see from the preamble it self. In the preamble of India it state that constitution is for to constitute a socialist country. Protection of environment is a socialist thing. There is also provision of protection of environment in Article 19(a), Article 19 (g), article 21, Article 48 A. In this regard protection of environment is a fundamental right, that incorporated in the various article, and Directive Principles of State Policy. Besides there is some statues for the protection of environment. Our constitution provide a valid position for it.

KEYWORDS: Environment, constitution , Rights, protection, Article, citizen, pollution fundamental

INTRODUCTION

Environment is one of the essential that for our sustainable enjoyment of life. So it's protection is greatly important. Now a days people's exploit unnecessarily. It create unbalance in our ecosystem. So to constitute a balance between the society and environment protection is essential. In our constitution of India there exist so many provisions for the protection of environment. A fundamental status is given for the protection of environment for a healthy and good environmental conditions. Now a days rapid increases in deforestation, air pollution ,water pollution etc.. make danger to environment. The unhealthy action of humans lead to non existence of life in earth . So it's protection is essential. Now we can briefly look about it in the eye of constitution.

Preamble and environmental protection

Constitution preamble is the key of constitution. By reading the preamble we get the ultimate aim of our constitution. It mentions all simple aspects of humans need in simpler language. The preamble starting with that we the people of India have solemnly resolve to constitute India into a socialist, sovereign, secular, democratic , republic country. Constitution aims to develop a socialist pattern of society before thinking about the individual rights. Here the interest of people is important.

For a socialist pattern of society there is a need of healthy environment that free from pollution and also from endangers. It is the duties of citizens to make a clean and clear environment and provide a decent standard of living. For that goal there must a strict and good standard rules for the country to maintain good environment. For that purpose the socialist pattern is included in preamble.

Obligation of state and citizens for environmental protection

- **Obligation of state**

Part 4 of our constitution deals about the Directive Principles of State Policy. It is the non justifiable rights, that is considered by law maker when they making laws.

Originally the constitution does not contain any specific provisions for the protection of environment. However in 1976 by the 42nd Amendment the constitution incorporate provisions for the protection and improvement of environment. The constitution obliges the state and citizens to protect and improve the environment. Article 48 A state that the state shall endeavour to protect and improve the environment and to safeguard the forest and the wild life of the country. This article is inserted to provide a obligation to citizen for the protection of environment. The word environment in this article is widely interpret. The meaning does not shrink to protection of environment it also extended to the development of environment. The natural resources that exists in the environment are interrelated to each other to maintain a ecological balance so it's protection is important for the existence of life.

In this article 48 A mentioned the duty of the state to provide protection of environment. It is the obligation of State to perform the basic duty .In the case of Hamid Khan v. State of Madhya Pradesh, 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.

- **Obligation of citizens**

In the history of constitution the 1976 is a remarkable year . The 42nd amendment, the mini constitution, makes so many contributions to constitution. One of such provision is the insertion of Part 4 A deals with fundamental duties, which is the obligation of citizens to perform. Article 51 A(g) specifically provided that it shall be the duty of every citizen of India to

protect and improve natural environment including forest, lakes, rivers, and wild life and to have compassion for living creature. This article created to citizen an obligation to protect and preserve the environment. Thus article 48A and 51 A (g) imposes two fold responsibilities. On the one hand it gives direction to protect the environment and in other hand it impose s a duty on every citizen for the protection of environment .

In **T. Damodhar Rao v. S.O Municipal corporation , Hyderabad**¹

The court pointed out that in view of Article 48 and Article 51 A (g) of the constitution, the protection of environment is not only the duty of citizens but it is also the obligation of the state and all other organs including courts .

Article 21 and environmental protection

Part 3 of the constitution contain a long list of the fundamental right. These fundamental rights are available against the state as defined in article 12 of the constitution. In this rights article 21 is considered as to be the heart and soul of fundamental rights. According to article 21 no person shall be deprived of his life or personal liberty except according to procedure established by law. The concept of right to life and write a liberty how been widely interpreted by the supreme court and various high courts. According to the various decision right to life includes right to live in a pollution free environment and having a decent and clean environment in which individuals can live safely without any threat to their lives.

In **M.C.Mehta v. Union of India**² the supreme court held that right to life under article 21 of the constitution includes right to live in a pollution free environment. In **Subash kumar v. State of Bihar** ³The supreme court held that right to leave is a fundamental right under article 21 of the constitution and it included right of enjoyment of pollution free water and pollution free air for the full enjoyment of life. If anything and dangerous that quality of life , a citizens and has right to approach under article 32 of the constitution. The Hon'ble supreme court of India in many cases provided that environmental pollution and consequently problems affect the citizen is a clear violation of article 21 of the constitution and their forever under article 32 is maintainable. In Rural Litigation and entitlement Kendra v. State of Up⁴ in this case rural litigation Kendra send a letter to the supreme court complaining about the unauthorised mining in the Missouri and Dehradun belt. The illegal mining affected the ecology of the surrounding area and environmental disorder. The supreme court treated the letter as writ petition and director to stop the illegal mining.

In **Charan sahu v. Union of India** ⁵ the supreme court held that it is the duty of state to take precautionary measures to protect life and liberty which include pollution free air and water.

In **P.A Jacob v. Superintendent of police Kottayam** ⁶ the Kerala High court observed that the compulsory exposure of unwilling persons to dangerous and disturbed level of noise would amount to the violation of Article 21. Right to life includes right to safe environment, including safe air quality, safe from noise. In Law society of India v. Fertilizers and chemicals Travancore Ltd⁷

In **virender Gaur v. State of Haryana** ⁸ the supreme court observed that “ Enjoyment of life and it's attainment including their right to live with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water sanitation without which the life cannot be enjoyed.....Environmental, ecological ,air, water pollution etc.. should be regarded as amounting to violation of article 21. Therefore hygienic environment is an integral part of right to healthy life and it would be impossible to leave with the human dignity without a human and healthy environment”.

In **S. Jagannath v. Union of India** ⁹ the supreme court held that the sea beaches and sea coast are the gift of nature and it's degradation cannot permitted. In this case a intensified shrimp industries activities cause degradation of mangrove ecosystem, and cause various pollutions. It was held that the said activates of industries are violative of Constitutional provisions and various other environmental legislations.

By article 21 the protection of environment and their improvement is one of the fundamental right. Whenever these fundamental rights are violated by the state the aggrieved person can approach the supreme court under article 32 or the state high court under article 226 for the enforcement of his fundamental right. The supreme court and the High court can issue writs in the nature of mandamus or certiorari to protect environment from pollution or for its improvement.

Article 19 and environmental protection

Article 19(a) which state about right of speech and expression . By this article so many persons send letter to court through the way of speech and expression. By this letter it taken as complaint and take cognizance of the matter.

Along with this Article 19(g) state 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 . But this have a restriction under Article 19 (6) . It lays down the reasonable restriction to this fundamental right to avoid the environmental hazards. This provision is provided to maintain a ecological balance in the environment. By this no one can harm environment in the name of trade or business.

¹ AIR 1987 AP 171

² AIR 1987 SC 1086

³ (1991) 1 SCC 598

⁴ AIR 1988 SC 2187

⁵ 1990 (1)SCC 598

⁶ AIR 1993 Ker. 1

⁷ AIR 1993 Ker. 308

⁸ (1995) 2 SCC 577

⁹ 1997 2 SCC 87

In **M.C Mehta v. Union of India**,¹ certain tanneries were discharging effluents in the river Ganga which was causing water pollution. Further, no primary treatment plant was being set up. 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.

Role of judiciary in environmental protection

In spite of wide range of environmental cases relating to protection number of cases are passed. Indian judiciary plays a important role in enforcing environmental law and safeguarding environmental rights and sustainable enjoyment. Supreme court of India for achieving a balance between the environment, society and economics it adopt the principal of sustainable development. Sustainable development is a concept which aims to protect environment and industry. The term was introduced by Brundtland Commission. This commission is set up by the general assembly of UN in 1983. According to this report sustainable development is a development that meets the needs of present without compromising the ability of the future generations to meet their own needs. The sustainable development is a process of change in which the exploitation of resources, the direction of investment, the orientation of technological and institutional changes are all in harmony and enhance both current and future potential to meet human need and aspirations.

Like any other developing country, India has been environmental degradation due to over exploitation of resources, population explosion, industrialization, urbanization. However India Government been taking all possible step for protection and improvement of environment aiming at sustainable the judiciary in India has played a very important role in the environment protection and applied the principle of sustainable development in deciding the cases. In the principal of sustainable development mainly there existed two basic principles the polluter pays principles and the precautionary principle.

- **Polluter pays principles**

The principal is the basic principles of sustainable development. This says that there is an absolute liability when any person or entity harm the environment and the persons who is responsible for the environmental degradation is liable to pay compensation to the victims of the pollution and also provide cost of restoring the environmental degradation. In Indian Council for **Enviro_legal Action v. Union of India** ² a public interest litigation was filled alleging environmental pollution caused by private industrial units. The industrial units located in the bichari villages in Udaipur were producing certain chemicals without obtaining necessary clearance. They did not install any equipment for the treatment of highly toxic effluent discharged by them. The highly toxic effluent s are discharged in ground water which make the underground water unfit for drinking. The supreme court directed the closure of industries. By applying the polluter pays principle the court order compensation to villagers as a remedial measures.

- **Precautionary principle**

This principle says that any substance or activity causing a threat to the environment is to be prevented from adversely affecting the environment. The government should adopted such measures which anticipate prevent and attack the causes of environmental degradation. If there are threats of serious and irreparable damage to environment the state should adopt measures to prevent environmental degradation even though there is no scientific certainty.

This principle is firstly applied in **M.C. Mehta v. Union of India**³ it is popularly known as Taj Mahal case in this case a public interest litigation was filed which alleged that Taj Mahal is degrade due to the use of coal by industries situated near the Taj Mahal. The supreme court in this case applied the precautionary principle by holding in the path of sustainable development.

Legislation related to protection of environment

1. **Environmental protection Act, 1986**

Indian parliament in enacted several acts for the prevention and control of environment pollution. All these act provide legislative provisions for the protection of environment. All these are interdependent. The main object of environment protection act is to achieve protection and improvement of environment which the water act and the air act could not achieve. This act is only a skeletal legislation containing the policies and intention. The rule making power is vested on the central government. By this power conformed on central government under section 6 and 25 of the act the government in acted so many rules some of them are environment (protection) rule 1986, the hazardous waste (management and handling) rolls 1989 and the Manufacture Storage and import of Hazardous chemical rules 1989. These rules give life to the Environment (protection) Act, 1986. This act is an small legislation contain 26 sections. The preamble of the act says that the act is to provide for the protection and improvement of environment and four matters connected their with. Section 3 of the act empowers the central government to take measures to protect and improvement of the environment. By considering that the central government take the following measures

It co-ordinate the actions of the state government officers and other authority under this act

It shall plan and execute a nation wide program for the prevention, control and abatement of environmental pollution.

¹ AIR 1988 SC 1037

² (1996) 3 SCC 212

³ (1997) 2 SCC 353

It prescribe the standard for the quality of environment in its various aspects

It is short describe the standard for the emission for discharge of environmental pollutants.

It is short prescribe the procedures and safeguard for the handling of hazardous substance. It shall carry out investigation and sponsor research relating to problems of environmental pollution etc..

By section 15 of the act whoever fails to comply with or contravene any of the provision of this act shall be punished with imprisonment for a term which may extended to 5 years or with the fine is may extended to 100000 rupees or with the both. In case the failure or contravention continues the person is liable to be punished with fine which may extend to 5000 /- for every day during which failure continue.

2. The water (prevention and control of pollution) ,Act,1974

This act is a major enactment intent to protect water from pollutions. It contain 64 sections. In this act also as the central government how power to make rules regarding to the protection of water from pollution under section 63. Under section 64 of the act it empowers state government to make a rules to carry out the provision of the act. The main object of this act is to prevent and control the pollution of water, to maintain and the restore the wholesomeness, to establish Central and state boards to prevent and control water pollution, to confer powers to the boards necessary for the prevention and control of water pollution, to establish Central and state water testing laboratories to enable the boards to assess the extent of pollution, lay down standards and established guilt or default, to provide penalties for contravention of the provisions of the act. This act establishes a central pollution control Board under section 3. The boards main function is to promote cleanliness of streams and wells in different areas of the state and some other additional functions. By section 4 of the Act the state government shall constitute a state pollution control board to the protection of water from pollutions. Besides this there is a joint board which is constituted by two or more governments of contiguous states. Similarly a joint board may be constituted by the central government in respect of one or more union Territories and one or more states contiguous to such union territories

3. The Air (prevention and control of pollution) Act,1981

India participated in the United Nations conference on the human environment held in stock holm in June 1972. In this conference the decision where taken to take appropriate steps for the preservation of the natural resource of the earth which include the preservation of quality of air by controlling air pollution. For the effect of this decision the India government enacted the air prevention and control of pollution act 1981. The main object of this act is to preserve the quality of air and to control air pollution. This act also empowers the central government to make rules under section 53. By these act a central pollution control board is formulated under section 3 of the act. The main function of these board is to improve the quality of air and to prevent control and abate air pollution in the country. Other is also a state pollution control board under this act. This also plan to comprehensive program for the prevention control or abatement of air pollution and to secure the environment. This act also provided some of the penalties for the person who violated the provisions of the act that who dangerous the environment.

4. National environment Tribunal Act, 1995

In 1992 India participated in the Earth summit. In this Earth summit the Rio declaration called upon the seats to develop National laws regarding liability and compensation for victims of pollution and other environment damages. For implementing the decision of Earth summit related to the protection of environment and payment of compensation for damage to persons, property and environment while handling hazardous substance the National Environment Tribunal act, 1995 was enacted. This act aims to provide speedy remedy relating to compensation for damage arising from environmental degradation. It has only 30 section. Under section 3 if there any damage caused to environment and the accident result to death, permanent or temporary or partial or total disability, loss of wages due to disability, medical expenses, damage to private property, loss of employment or business, any other claim arising out of handling of hazardous substance. The person responsible must pay compensation to them. The aggrieved person can file an application under section 4 of the Act. According to section 8 of the act the tribunal is constituted by central government. The Tribunal has the same power that of civil court. It is held in section 23 of the act. The judgement passed by the tribunal is same as that of civil court. This was dr act was a specific legislation that tell about environmental issues and compensation. The Act has the power to punish anybody who violates the rules set by the Act relating to the protection of the environment. So this legislation is important in the history of environmental protection.

: 5. Wild life protection Act,1972

This act is a piece of legal framework which deals about the protection of various species of wild animals and plants. Preservation of this wild life is also the part of environmental protection. This act only cover specific species listed in the schedule As per section 3 of the act it gave power to state government for the protection of this animals and plants. This act contain several key features aimed to conserving and preserving the wild animals and plants. It mainly prohibit the illegal hunting and killing of the animals. It also prohibit certain species plants picking, uprooting etc... For the effective conservation of the this animals several bodies are formulated. These bodies play a significant role in ensuring the protection and management of wildlife and their habitats. These bodies are National Tiger Conservation Authority, Wild life Crime Control Bureau , State Wildlife Advisory Board, Wildlife Wardens, Central Zoo Authority , National Board For Wildlife. Wildlife Protection Act targets the conservation and preservation of wildlife species and their habitats. It establish do many protective mechanism for the protection of wildlife. Primarily it is administered by the Ministry of Environment, Forest and Climate Change, and implemented by State Forest Departments and other designated authorities.

Global perspective on environmental law.

International Environmental is branch of environmental law which deals about the issues of environment in global perspective. During the 20th century so many movements were emerged for the protection of environment. The ecological imbalance,

destruction of ecosystem, exploitation of wild flora and fauna is give attention to protection of environment in international scenario. In 1963, the World Conservation Union (IUCN), a nongovernmental organization (NGO) dedicated to environmental conservation, called on all nations to take steps to protect endangered species.¹ Following on the issue 80 Nations initiate Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). It is an international documents to protect the endangered animals and plants . It gets a wide range of support from all over the country. In the international level so many conference is conducted to deal with the environmental issues. Some of the important conference are following.

1. United Nations conference on the human environment

In the international scenario popularly known as Stockholm convention is the major Un conference relating to environmental issues and to declare right to live in healthy environment is the fundamental right of human. The object behind this conference is to address the environmental issue before the United Nations people and also give attention to government and public regarding the matter. In 1972 December the UNEP coordinate in this convention to participate in global action of protection and preservation of environment. The conference secretariat headed by Mr. Maurice F. Strong. At the end of conference they adopt a declaration. The declaration can be divided into two . In the first part it deals about the seven truth of man and connection with environment. The second part deals with 26 principles which is a basic policy relating to protection and preservation of environment.

The declaration recognize that the greatest threat of environment is human. Humans activities are the greatest cause to environmental degradation. It is discussed detail in the convention. It also discuss about role of government and human contribution regarding the environmental protection. The declaration is subjected to criticism but it create an awareness about the environmental protection. People are now better to know about the changes of the environment.

2. United Nations conference on Environment and Development

In 1992 the Rio-summit or Rio_conference was held from 3 to 14 June. It is also called as United Nations conference on Environment and Development . The main aim of the conference is to formulate an agenda and fresh start in the area of environmental protection in 21st century. It is associated with the convention on the biological diversity. This summit very helpful to understand the importance and attitudes towards the environment. After the summit some international actions were taken based on it. In this Rio- declaration 27 principles were incorporated in it. According to the Rio Declaration on Environment and Development, countries can utilize natural resources inside their borders as long as it doesn't harm other countries' environments.. Any way this declaration has a good effect in the case of environmental protection's environment. They contribute some necessary measures to Protection of environment.

CONCLUSION

We live in the blue planet of Earth which is surrounded by flora and fauna. In each and every second of our existence there protection is very essential. We can't avoid it's use and importance. In our constitution of India it provides some important mechanism to there protection. The provisions is started from the preamble itself. The protection is the socialist pattern of democratic country. The environment is a socialist concern. After that the protection of environment is seen in Article 21 . It says that right to clean environment is included in right to life. Article 19 also made provisions regarding it. Article 48 A and 51(g) deals with the protection of environment. The judiciary also plays crucial role. When we look about the global perspective the protection can't be avoid.

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