

THE INDIAN CONSTITUTION AND ENVIRONMENT PROTECTION: AN ANALYTICAL STUDY

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ABSTRACT

Our constitution has evolved over the years. In Indian scenario environmental protection has not only been raised to the status of fundamental law of the land, but it also has also have been webbed with human rights approach and now is well recognized with the fact as the basic human right of every individual, to live in an contamination free environment with complete human dignity. The preamble of the constitution provides for a socialist society which promotes protection of our environment. . The fundamental duties imposes duty on all citizens to protect the environment Article 47 states that the State should focus to raise the level of nutrition and living standard of its people and also the improvement of public health which includes the protection and improvement of the environment. Article 48-A of the constitution states that the state shall endeavour to protect and improve the environment and to protect the forests and wild life of the country. Part III guarantees fundamental rights which are essential for the development of an individual. A citizen cannot carry on a business activity if it causes health hazards to the society and general public.

INTRODUCTION

In Indian scenario environmental protection has not only been raised to the status of fundamental law of the land, but it also has also have been webbed with human rights approach and now is well recognized with the fact as the basic human right of every individual, to live in an contamination free environment with complete human dignity. The Supreme Court has orated that the essential features of sustainable development such as ‘precautionary principle’ and also the ‘polluter pay’s principle are also the part of environmental law of India. The Constitution of India can impose an obligation on the “state” as well as its “citizens” to protect the environment. The arrangements contained for ecological security by the Indian Constitution has been trailed by different countries on the planet. One such country is South Africa.

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Comparative arrangements for ecological insurance have been consolidated by the farmers of the South African constitution.

PREAMBLE

At the very start, the preamble sets up that our nation depends on the "communist" example of society, in which the state gives more consideration to social issues than on singular issues. The essential thought behind the idea of communism is to advance "better than average way of life for all" which is just conceivable in a contamination free environment. Pollution is considered as one of the social issues. The state is in this manner constrained by the Constitution to focus on this social issue to establish a just social issue. This goal of the preamble is strikingly reflected and in explicit terms in Part IV of the Constitution, which deals with the directive principles of state policy. The preamble further announces India to be a "democratic Republic". In such an arrangement, individuals have rights to know and to participate in the governmental policies and access data of environmental policies which is critical for the accomplishment of government policies. Other objectives of the preamble include justice, liberty and equality which finds its place in the Part III of the Indian Constitution that deals with fundamental rights.

OBLIGATION TO IMPLEMENT INTERNATIONAL AGREEMENTS

The goals of the global agreements must be accomplished if all the relevant nations become parties to them. India is a signatory to various worldwide treaties and agreements related to regional and in some cases worldwide ecological issues. India has played a leading role from 1972 UN Conference on Human Environment at Stockholm to 1992 UN Conference on Environment and Development at Rio de Janeiro and furthermore in the Earth summit Plus 5 of 1997 at New York. India is therefore under an obligation to follow the contents and decisions of the international conferences, treaties & agreements abiding its national laws Article 51 (c) expresses that "the state will attempt to cultivate regard for international law and treaty obligations in the dealings of organised individuals with each other." Article 253 of the Constitution enables the parliament "to make any laws for the entire or any piece of the region of India for implementing any treaty, agreement with some other nation/nations/any choice made by any international conference, affiliation or other body." Entries number 13 and 14 of

the Union list, we can conclude that the parliament can pass any law including laws on environmental protection and the same cannot be challenged before the courts on the ground that the Parliament lacks legislative competency to do so. Thus, Article 253 is read with entries 13 & 14 of the Union list, we can conclude that the parliament can pass any law including laws on environmental protection and the same cannot be challenged before the courts on the ground that the Parliament lacks legislative competency to do so.

FUNDAMENTAL RIGHTS

The quintessence of Principle 1 of the Stockholm Declaration can be found in our constitution in Articles 14, 19 and 21 managing the Right to Equality, Freedom of expression and the right to life and individual freedom separately. The lasting individuals' court respects the anti-humanitarian impacts of industrial and environmental hazards not as an unavoidable part of the existing industrial system, yet rather as a pervasive and organized violation of the most fundamental rights of humanity. Generally significant among these are the right to life, health, expression, association and access to equity. Every one of these rights are available in Part III of the Indian constitution which manages the fundamental rights. A constitutional provision is never static it is ever advancing and ever evolving and, in this way, never concede to a limited, pompous or syllogistic methodology. The fundamental rights are planned to serve one age after another. The provisions of part III and part IV managing major rights and mandate standards separately are advantageous and corresponding to one another. The basic idea behind fundamental rights is to achieve the goals mentioned in directive principles and must be construed in the light of the directive principles. A right can be perceived as a fundamental right despite the fact that it isn't explicitly referenced in the constitution. Accordingly, we can say that there are numerous unremunerated major rights in Part III and legal activism in India has taken a lead in deciphering different unremunerated rights in Part III of the Constitution. Environment protection is one of them. Specific provisions are only provided in the part dealing with Directive Principles and Fundamental Duties, yet right to live in a healthy environment has been interpreted by the judiciary into various provisions of Part III of fundamental rights. In this way, the legal executive in India has given catalyst to the Human Rights approach for the security of nature.

In *D.D. Vyas v. Ghaziabad Development Authority*, the complaint of the candidate was that the respondents had not found a way to build up the area reserved for park. Then again, respondents were making time to cut out plots on such open space devoted for open park in the arrangement and alienate the same with a view to earning huge profits. The Allahabad High Court followed the announcement of the Supreme Court in *Bangalore Medical Trust* and held that position or state can't revise the arrangement in such a manner in order to obliterate its essential element permitting the change of open space implied for open park.

DIRECTIVE PRINCIPLES OF STATE POLICY

Part IV of the Constitution manages directive principles of State policy. These directive principles speak to the financial objectives which the country is relied upon to accomplish. The directive principles form the fundamental features and the social conscience of the Constitution and the Constitution enjoins upon the State to implement these directive principles. These directive principles are intended to control the fate of the country by committing three wings of the State for example legislature, judicature and executive to implement these principles. Article 47 of the Constitution is one of the directive principles of State policy and it 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 health as its primary duties. The improvement of general wellbeing likewise incorporates security and improvement of nature without which general wellbeing can't be guaranteed. The 42nd Amendment of the Constitution in 1976 included another directive rule in Article 48-A, managing the preservation and improvement of the earth. It goes as under:

The state will attempt to ensure and improve nature and to defend the woods and untamed life of the nation.

Thus, Indian Constitution became one of the rare constitutions of the world where specific provisions were incorporated in the *Suprema Lex* putting obligations on the State as well as citizens to protect and to improve the environment. This certainly is a positive development of Indian law. The State cannot treat the obligations of protecting and improvising the environment as mere pious obligation. The directive principles are not mere show-pieces in the window-

dressing rather they are fundamental in the governance of the country and being a part of the supreme law mandatory to implement.

Article 37 of the constitution gives: The arrangements contained to a limited extent IV will not be enforceable by any court, yet the principles in that set down are by the by crucial in the administration of the nation and it will be the obligation of the state to apply these principles in making laws. The court can't legitimately authorize the directive principles by convincing the state to apply them in making the law yet just when the state submits a break of its obligation by acting in a manner which is in opposition to these principles The directive rule serves the courts as a code of understanding. They presently remain as raised to basic major human rights. Indeed, even they are legitimate without anyone else. In *M.C. Mehta v. Association of India*, the court saw that Articles 39(e), 47 and 48-A without anyone else and by and large cast an obligation on the state to make sure about the soundness of the individuals or to, improve general wellbeing and to ensure and improve nature.

REMEDIES FOR THE ENFORCEMENT AND WRIT JURISDICTION

According to Doctor B.R. Ambedkar, Article 32 is the backbone of the Indian Constitution. He regarded this article as the most important article in our constitution. It is the most innovative part of the Indian Constitution as fundamental rights can be enforced in the Supreme Court under this article by filing a writ. It is also conferred upon the 24 High Courts of the country under Article 226 of the Constitution. Under these provisions the Supreme Court and High Courts have the power to issue any direction or orders or writs in the nature of Habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever is appropriate. The only difference between the writ jurisdictions of the two is that one can move the Supreme Court only for the enforcement of fundamental rights, whereas in High Courts, it may be for the enforcement of fundamental rights or for any other purpose. From this point, the writ jurisdiction of the High Court is wider in scope. But it's a fact that "the law declared by the Supreme Court shall be binding on all Courts within the territory of India" also the Supreme Court in exercise of its jurisdiction may pass any decree or make any order which is necessary for providing justice in any matter pending before it. Generally Environmental law is regulated by specified statues but, in India the Environmental law jurisprudence has mostly developed through writ jurisdiction. Judicial activism and the concept of Public Interest Litigation under writ jurisdiction have

brought about a mutation in the procedural jurisdiction and it has played a pivotal role in developing and providing impetus to environmental jurisprudence with Human Rights approach. The remedy is preferred over torts action or public nuisance because it is relatively speedy, cheaper and provides direct approach to the higher judiciary thereby reducing the chances of further appeals. The relaxed rules of locus standi and evolution and recognition of epistolary jurisdiction by the Supreme Court and High Courts has further ensured the public participation in matters like environment protection. The remedy under writ jurisdiction also provides flexibility to the courts. The judiciary has been very cautious in its approach. It has refused to interfere on imaginary apprehensions of environmental pollution and in those cases where the government has arrived at a decision after considering relevant facts and application of its mind without any extraneous considerations. However, the court has always issued directions for strict compliance with Environment Protection Act, 1986. The court has been ensuring the compliance of its orders by granting costs against the parties for non-compliance. The number of times the court has appointed monitoring committees to see that the courts orders are duly complied with. The Court has also used the affidavits, commissions, panel of experts and took judicial notice for ascertaining the factual matrix.

Conclusion

From the scrutiny of different decisions, it is evident that the Indian judiciary has utilized the strong arrangements of the established law to build up a new "environmental jurisprudence." The courts have not only created public awareness regarding environmental issues but also it has brought about urgency in executive lethargy, if any, in any particular case involving environmental issues.