

THE CONSTITUTIONAL ARMATURE FOR ENVIRONMENT

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The term Environment in itself encompasses a meaning of world that supports every life system. Right from a child's birth, one needs air to breath, clear drinking water, healthy food and also hygienic condition to live in. These are factors are a sine qua non for a person's sustenance. Man in order to survive looks towards the Environment but rarely notices the large amount of havoc and destruction that one causes to it for one's development. But however in the decade of 70th the new conventions and conferences held for example the Stockholm conference on Environment and Development 1972 spread a boom of awareness into various countries. This also led India to incorporate within its Constitution the safeguards to protect its Environment and establish sustainable development. The Articles such as 48A provides that state endeavor to protect and improve environment this also increases the responsibility on the state. The Constitution enforces its responsibility on both its citizens and the government to guard its shelter from both external and internal damages created to it. It is also a fundamental or the most basic right granted for which one can redress to courts for its imposition. The necessity to give importance to Environment arises directly from the necessity of life. As it is rightly said one supports the other's requirement- the fundamental law of the land hence protects the fundamental right of the citizens.

The concept of Environment is as old as the concept of the Nature itself. It is a term describing the conditions in which organisms consisting of air, water, food, sunlight etc. thrive and become living sources of life for all¹ for others in the existing world. Generally the term Environment means surrounding, this refers to anything that is around or surrounded. That is why Einstein defined it as "Environment is everything that isn't me". Therefore in order to encompass a viable meaning the Environment Protection Act 1986 defines the word Environment as:

"Environment consist of water, air and land and its inter-relationship which exists between water, air and land, and human beings, other living creatures, plants, micro-organism and property"

Hence it is necessary to safeguard the natural environment as it is a part of our neighborhood. The Indian constitution has played an important role in protection of the environment. Originally the constitution did not contain a specific provision for the protection and promotion

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¹MAHESHWARA SWAMY, TEXTBOOK ON ENVIRONMENTAL LAW 1(2 ed. Asia Law House 2007-2008).

of environment. However in course of time the problem of pollution began to draw attention of the environmentalists in the world community, In 1972 India attended the United Nation conference on Human Environment and also became a signatory of its declaration. In pursuance of Stockholm Declaration, Constitution (Forty Second amendment Act) 1976 was passed providing for protection and improvement of environment under Art 48-A and Art 51-A (g). Thus the Indian Constitution is the first constitution in the world mapping specific provisions for the protection and improvement of environment.² The statutes have the power to look into the matters of environmental issues and therefore from this perspective it is essential to have knowledge about the allocation of legislative powers as enunciated under the Constitution of India. Consciously or unconsciously the Indian Constitution deals with the legislative powers relating to environment, these powers are divided into the Union list, State list and the concurrent List. Thus it is clear that the constitution provides sufficient provisions to deal with environmental problems and under this several enactments have been accordingly passed such as the Environmental (Protection) Act 1986 which is not up to expectations, it is comprehensive for the protection of environment and for the maintenance of ecological balance that the Act should be free from ambiguity and drawbacks.

Similarly Air (Prevention and Control of Pollution) Act, 1981 with the Wildlife Protection Act and the Indian Forest Act etc. all above legislations are feeble to cope with the problems of environment degradation in spite of their respective shortcomings as they are substituted from time to time by the constitutional law of the land.

“The scientific and technological advancement of man has invested him with enormous power over nature; it has also resulted in unthinking use of power, encroaching endlessly on nature”

-As held in *Shri Sachidanand Pandey v, State of West Bengal*³

Therefore the constitution of the country enshrines a provision to shelter and secure the living nature of the country.

Apart from this the constitutional law of the land has imposed an obligation to protect the natural environment both on the state as well as the citizens of India. Part IV of the Constitution called the Directive principles of state policy has imposed certain fundamental duties on the state to protect the environment and part IV-A of the Constitution has imposed a fundamental duty on every citizen of the country for the protection of environment “to protect the natural

²J.R. UPADHYAYA, ENVIRONMENT LAW 66 (5 ed. Central Law Agency 2018)

³ AIR 1987 SC 1109

environment which includes forests, lakes, rivers, and wildlife and to have compassion for living creatures”⁴.

The constitution imposes two forms of obligations i.e. obligation on the state and the citizens. The Article 39(b) of the constitution provides that the state shall direct its policy to ensure that “the ownership and control of the material resources of the community are as distributed as best for the common good”. The term “material resources” in the above clause also includes resources which are natural in nature. Also the Articles 42 and 47 of the constitution direct the state to provide human conditions of work and to raise the standard of living of people accordingly. The Art 48 guides and protects agriculture and animals which is also a part of environment. Among all the Articles the Art 48A ensures special guard to the environment by directing the state to *“protect and improve the environment and to safeguard forests and wildlife”*. Also in the case *MC Mehta v. Union of India*⁵ the court pointed out that ‘these directive principles (Articles 39 (b), 47 and 48A) individually and collectively impose a duty on the state to create conditions to improve the general health level in the country and to protect and improve the natural environment’, which signifies that state shall endure its support and also take efficient steps in order to preserve and protect the rich canopy and shelter of environment which lays the foundations of the survival. Similarly as the state the citizens are also obliged and bound to fulfill certain responsibility to lay a foot forward for sustainable development, the Constitution under part IV A article 51 A (g) has declared that it shall be the fundamental duty of a citizen of India *“to protect and improve the natural Environment including forests, lakes, rivers, and wildlife and to have compassion for living creatures”*. With regards to the same in the case *Vijay Singh Puniya V. State of Rajasthan* ⁶ the court held that ‘any person who disturbs the ecological balance or pollutes the nature such as air, water, river, sea and other elements of the nature, he has not only violated the fundamental right guaranteed under Article 21 of the Constitution but also breaches the fundamental duty to protect the Environment under Article 51A (g).’

De Tocqueville once quoted that liberty cannot stand alone and has to be paired with any companion by virtue and liberty and civic responsibility are companions in the same lines Plato remarked that ‘we are still like cave men, with our backs turned to the light, watching the shadows on the wall’⁷, hence, man for his mere existence depends on nature as per Plato’s remark and hence he has to fulfill his basic civic responsibility of protecting it in order to reap

⁴S SHANTHAKUMAR, INTRODUCTION TO ENVIRONMENTAL LAW 85, (2 ed. Lexis Nexis 2001)

⁵ (2002) 4 SCC 356

⁶ AIR 2004 Raj 1

⁷ S SHANTHAKUMAR, INTRODUCTION TO ENVIRONMENTAL LAW 85, (2 ed. Lexis Nexis 2001)

the benefits of liberty. Therefore, it is an obligation on both the citizens and the state to save environment as per Constitutional mandate.

In addition to the obligations the Constitution also establishes the Fundamental rights which compose the heart and soul of the constitution and there exist a relationship between these rights and Environmental Protection. With respect to Articles 14, 19, and 21 of the Indian Constitution the principle 1 of Stockholm Declaration proclaims that man has the fundamental right to freedom, equality and adequate necessities for life, in an environment of quality and permits a life of dignity and wellbeing, and he bears a solemn responsibility to protect and improve the environment for present and future generations.⁸This nexus between fundamental rights under part III of the Constitution and Environmental protection can be studied with regards to right to equality, right to life, right to livelihood, fundamental freedom to carry on trade or business.

Firstly in connection with **Right to equality** which is dealt under Article 14 of the constitution and reads “*the state shall not deny to any person right to equality before law or equal protection of law within the territory of India*”. This article plays a very significant role in protection of Environment; it prevents Arbitrariness of the state and its discretionary actions and also with holds the principles of natural justice, fair play and reasonableness. Also in the case *Bangalore medical trust v. B.s Muddappa*⁹ Supreme Court prohibited an attempt to convert a public park site into a nursing home and held that ‘public park a place reserved for beauty and recreation..... is associated with growth of the concept of equality and of importance of common man..... it is a “it is a gift from people to themselves”. Its importance has increased with emphasis on environment and pollution

With respect to **Right to life** which is a fundamental right under Article 21 of the Constitution of India has been in constant interpretations and has not remained in a state of Inertia. Therefore In the case *Rural Litigation and Entitlement Kendra V State of U.P*¹⁰ is the first and foremost case recognizing right to live in a healthy environment as a part of Art 21 and In the *M.C Mehta V Union of India*¹¹ which is prominently known as Oleum Gas leakage case, the supreme court held that Right to live in pollution free Environment stands as a part of Fundamental Right to Life under art 21 of the constitution.

⁸ J.J.R. UPADHYAYA ,ENVIRONMENT LAW 66, (5 ed. Central Law Agency 2018)

⁹ (1991) 4 SCC 54

¹⁰ AIR 1985 SCC 431

¹¹ AIR 1987 SC 965

Thirdly the Environmental Protection is talked about in **Right to Livelihood** which has broadened the scope of Article 21, every individual has the right to own means of Livelihood and enrich their existence which duly causes development that might be hazardous to the environment, hence the Supreme court in terms which the problem interprets every situation and accordingly safeguards the Environment, For instance when people living in tribal areas need to be vacated for building up a thermal plant, the place of their stay is there means of livelihood as well as a means of development, a decision regarding the same has to be taken by keeping in mind the protection of environment.

Similarly the **Fundamental freedom to carry on Trade or business** Article 19(1) g mentions about the above provision in the Constitution of India, but there are certain restrictions to it which is subject to the condition that it should not cause pollution to the Environment while practicing a individual's freedom of trade or business.

Indian constitution has provided various rights and is amongst the few in the world that contains specific provisions on environment protection. Environmental protection and improvement were explicitly incorporated into Constitution by the 42nd Amendment of the Constitution, These provisions are constantly interpreted and expanded by the Supreme Court of the country, and it lays down foundations for implementations of the provisions. Under these provisions constitution may not only adopt the protectionist policy but also provides certain measures for the improvement of polluted environment.

After the significant development, the individuals also started taking action under the writ jurisdiction of the courts for the protection of nature. Article 226 deals jurisdiction of High Court and Supreme Court under Article 32 which together constitute writ jurisdiction where writ jurisdiction can be entertained for any violation of fundamental rights mentioned under Part (III) of the Constitution .Thus, these writs play an important role to meet the ends of justice for the people.

Power of Supreme Court under Article 32 to award damages:

Article 32 has awarded damages who have been disturbing the ecological balance by running industries or any other activity which causes pollution.

In *MC Mehta vs. Kamal Nath and others*¹² was a case to determine the quantum of fine to be levied for pollution. It looked into the matter through “*Polluter pays principle*” which is widely accepted as a mode of paying the cost of pollution and control. In other words, the wrongdoer (polluter) is under an obligation and to make good of the loss for the damage caused to the environment. Pollution is a civil wrong thus, the person guilty for causing pollution is liable to pay compensation.

Power of High Court under Article 226 for prevention of pollution:

In *D.D. Vyas V. Ghaziabad Development Authority*¹³ when a writ petition is filed for under Article 32 for prevention of pollution by a group of social workers or journalist, a writ petition under Article 226 of the Constitution can be brought for preservation of free air and for the protection of environment either in same locality or any other place.

Today in and around the country environmental pollution and degradation have reached to an alarming state due to rising population, poverty, industrial development, deforestation, greed, lack of responsibility and sheer negligence on the part of individuals. But also the country has realized its necessity for Mother Nature and has taken various steps such as Air and Climate pollution control, cleanup and spill prevention, pesticide and chemical safety, Swachh Bharat and also various legislations such as Environment Protection Act 1986, The Forest Conservation Act 1980, and Wildlife Protection Act 1972 etc. have been enacted. But there is a need for penetration of environmental preservation in every corner of the country so it can evoke and enlarge the scope of sustainable development for the future.

As it is rightly observed by Lady Bird Johnson that “Environment is where we all meet, where all have a mutual interest, it is the one thing all of us share”¹⁴; it is required to protect this interest by standard code which is provided by the supreme law of the land that is the Constitution. Constitution imposes an obligation on individuals and state to safeguard the primary surrounding.

Therefore the Constitutional mandate protects our Environment and also establishes power in the hands of legislature to enact laws but it is at most the responsibility of citizens to contribute

¹²AIR 2000 SC 1997

¹³AIR 1997 All 57

¹⁴ Brain Brassaw, *Earth day: 23 Of the Greatest Environmental Quotes*, EARTH911 (Nov 7, 2019, 7:30 PM), <https://earth911.com/inspire/earth-day-23-quotes/>

their best for the their surroundings and safeguard it because “one of the first conditions of happiness is that the link between man and nature shall not be broken”¹⁵ as marked by Leo Tolstoy.

“Every life needs to be protected and nourished for every other has the right to live in a world that provides sanctuary of hearty and healthy Earth”

¹⁵ *ibid*