

Protection of Environment: A Legal Obligation on the Indian Constitution

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"A nation that destroys its soils destroys itself. Forests are the lungs of our land, purifying the air and giving fresh strength to our people."

Franklin D. Roosevelt¹

ABSTRACT: -

Constitution of India is considered to be the heart and soul of India because it works for the people and by the people. Constitution provides with large no. of rights and protection to its citizens and hence constitution is considered to be the integral part for the people of India. Constitution is a small book which contains 448 articles in 25 parts and also 12 schedules. India the country of diversified cultures leads to involvement of various people with different religions due to which the country India is considered to be the country of festivals as there are a lot of festivals which are being celebrated. Although people here in India share different religions but at the same point all of them live beneath the same environment and same place i.e. India. Environment which is considered to be major and hot topic nowadays is getting polluted by the people because of the activities which they perform however environment is considered to be the most essential thing for a person to live in. People pollute the environment to such a great extent that it becomes difficult for others to live in. Indian Constitution provides which various articles that grants safety to the environment so that people who are living in India can have a peaceful and healthy life. In this paper we would be concentrating about the protection on environment through our constitution.

KEY WORDS: - Environment, India, Constitution of India, Cases, Articles, Punishments, Citizens, People, Protection, Pollution free environment etc.

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I. INTRODUCTION: -

Constitution of Indian which is considered to be the heart and soul of the country India is the protector for the citizens of India. In India, the concern for environmental protection has not only been raised to the status of fundamental law of the land, but it is also wedded with human rights approach and it is now well established that, it is the basic human right of every individual to live in pollution free environment with full human dignity.

The constitution of India was drafted by many people keeping in view the only motive which was to provide rights to each and every citizen of India which they are supposed to hold. During the framing of the constitution the framers didn't made any provisions for the protection of the environment nor even they used the term environment while making up of the constitution i.e. to say that while drafting the framers were not aware of the fact that after so many years environment shall become a great concern for its people which shall also further need protection.

Article 47 of the Constitution is considered to be more important, because it imposes the primary duty on the State to provide public with improved health, raised level of nutrition and ultimately improved standard of living. Public health can be assured to the public only by offering the safe and protected environment to live in. This enabled the framers of our Constitution to be more conscious on the environmental concern.

HISTORY OF ENVIRONMENT LAW IN INDIA: -

It can be clearly observed that the framers of the constitution never talked about the term Environment in any of its points during the time of drafting however it doesn't mean that environment law do not have any of its prior history. Environmental law in India can be traced back to four periods i.e.:

a. Ancient

¹ 40 Best Environmental Quotes to Inspire You to Do Your Part to Save The Earth, Your Tango (Mar.09, 20, 10:23 am) <https://www.yourtango.com/2018313744/best-environmental-quotes-save-the-earth>.

- b. Medieval
- c. British
- d. Post-Independence

• **ENVIRONMENTAL LAW DURING ANCIENT PERIOD –**

According to studies there was a clear shot conclusion that Hindu culture gave high respect to forests, wildlife, trees etc. The importance and detailed description about the same were mentioned in the important books of Hindu's namely Vedas, Puranas and Upanishads.

The different Vedas on which the people of Hindu culture rely also mentions various points on the environment like:

- a. Observing Climate
- b. Increase in fertility rate
- c. Improvement of human life dwelling

According to some of the Vedas trees are considered to be sacred groves of many gods and goddesses which is why it is often seen that on many Hindu festivals and in daily routine people worship the trees.

The Hindu society was well aware of the consequences of deforestation and hunting of animals would lead to effect in the environment. The ancient scriptures which were found in so many different places prohibited the killing of birds and animals in its strictest sense. During the Civilization of Mohenjo Daro Harappa, the Hindus who were a small population protected the environment by maintaining harmony with the environment.²

The Mauryan period marked the most important chapter in the Indian History regarding environment protection. Kautilya's Arthashastra for the first time in the Indian History gave a detailed legal perspective provision on environmental protection. The Arthashastra concentrated on the administration of forest which maintained forest and protected wildlife.³ This led to imposition of strict punishments to the people who were involved in cutting down of the trees and other environment affecting acts.

Hence it could further be ceased that the term environment and environment protection has been present in India from the ages.

PREAMBLE PROTECTING THE ENVIRONMENT: -

The preamble to the constitution of India is based on several principles like secular, republic, socialist etc. The very term 'Socialist' used by the preamble simply means that the State works for the betterment of the society as a whole i.e. to say that the State shall pay attention to the social problems and not only on individual problems which gives us a relief because the problem of environment is considered to be the biggest social problem of the country India.

The preamble further declares that, the great rights and freedoms which the people of India intended to secure all citizens include justice, social, economic and political. Justice also includes environmental justice. It is a mere interpretation to the word justice because there in no where the term environment being mentioned in the preamble. Environment as a subject matter has entered in our day to-day life in such a way that we cannot ignore deliberations on environmental matters when discussing about socio-economic or socio-political scene of the country.⁴

Preamble declares India to be a "Democratic Republic" which means that the people of India can freely participate in the government decisions without any contradiction. They also have the right to know and access to information of government policies which is very important for the success of the environment policies.

RIGHTS IN THE INDIAN CONSTITUTION AND THE ENVIRONMENT:

The Constitution of India which is simply a book for the people living in the other world is considered to be the longest constitution of the world because it consists of 448 articles with 25 parts and 12 schedules and also the said constitution is the longest written document. Rights and provisions for different aspects of India has been clearly stated in the articles which are being clearly present in the constitution. The framers of the constitution took idea from several other constitutions of different countries and then prepared this longest constitution which gives India and its citizens its face.

² Advrudra, Environmental Law and Constitutional provisions in India, Legal Service India.com, (Mar12,20, 9:00 am),<http://www.legalservicesindia.com/article/1926/Environmental-Laws-and-Constitutional-Provisions-InIndia.html>.

³<http://harvardelr.com/2016/11/14/constitutions-the-environment-comparative-approaches-toenvironmental-protection-and-the-struggle-to-translate-rights-into-enforcement/>

⁴ Dr.Sukanta K Nanda, Environmental Law, 65 (Central Law Publication: Allahabad, 1st Edn., 2007).

Constitution of India not only protects the people from discrimination, government decisions but also protects the environment in which the citizens leave. As stated above it is very much clear that since when the constitution has been made the framers have not mentioned anything regarding environment nor any such term was used by the constitution nor the preamble. However, several amendments have been made in the constitution amongst which the term environment was added to the constitution of India. There are several articles which deals with the provisions of environment under the Indian Constitution:

ARTICLE 48A which was added to the constitution of India through 42nd Amendment Act has been mentioned under the head of directive principles of state policy. It states that “the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country”.⁵ According to the stated article it is the duty of the State to protect the natural environment and improve the environment by various methods of preservation in order to reduce the pollution already caused. State should necessarily safeguard the forest and wildlife surrounding the country.

ARTICLE 51A (1)(g) provides for the duty to the Indian Citizens in addition to the duties provided by the fundamental duties. According to the stated article ‘to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.’⁶ The article has been very much similar to that of the Article 48A however the only difference between the two is that under Article 51A (1)(g) it is the mere fundamental duty of the citizens only to protect the environment however in the above mentioned said article it is solely the duty of the state to protect the environment.

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 Conference.’⁷

MAJOR CASES DEALING WITH THE SAID ARTICLES:

Now we shall understand the said head with the help of some major case laws relating to the environment which were given by the Indian judiciary:

- L.K Kollwal V State of Rajasthan⁸

In this case a writ petition by voters of Jaipur compelled the municipal authorities to produce adequate sanitation. The court in this case observed that it is the fundamental duty of the state as well as the citizen to maintain sanitation around their surroundings. Hence the Court gave the administration six month to wash up the complete town, and laid-off the plea of lack of funds and employees.

- The Bhopal Gas Tragedy Case⁹

The Bhopal disaster has brought in many legal questions on the liability of parent firms for their acts of subordinates, the responsibilities of transnational companies indulged in unsafe activities, the transfer of unsafe technologies and also the applicable principles of liability. Bhopal was sacred issue for the judicial innovation within the space of evolving principles of company liability to be used of unsafe technology.¹⁰

The Bhopal gas leak disaster (Processing of Claims) Act, 1985 was elapsed parliament to make sure that the claims arising out of the Bhopal disaster were proscribed chop-chop, effectively, equitably and to the simplest advantage of the claimants.

There are several other cases mentioned in the Constitution of India which are related to the protection of Environment.

PROBLEMS REALTED TO ENVIRONMENT: -

The term environment is very much a debatable topic nowadays because people in today’s world especially in Indian context have become so much selfish that they do not even care about the environment in

⁵ Article 48A in The Constitution of India 1949, Central Government Act, Indian Kanoon, (Mar,12,20 9:52 am) <https://indiankanoon.org/doc/871328/>

⁶ Article 51A (1) (g) in The Constitution of India 1949, Central Government Act, Indian Kanoon, (Mar,12,20 10:02 am) <https://indiankanoon.org/doc/1644544/>

⁷ CONSTITUTIONAL PROVISIONS FOR THE PROTECTION OF ENVIRONMENT WITH RELEVANT CASE LAWS, Environmental – law – article, (Mar,12,20 12:02 pm), <https://www.indianbarassociation.org/wp-content/uploads/2013/02/environmental-law-article.pdf>

⁸ L.K Kollwal V State of Rajasthan (1986) AIR 1988 Raj 2 (India).

⁹ The Bhopal Gas Tragedy Case (1990) AIR 273 (India).

¹⁰ <http://lawschool.unm.edu/students/organizations/els/constitution.html>

which they are living and which is providing them with all the sources which is needed to live a fruitful life i.e. their necessities. In the present environment in which we people are living are full of diseases and germs and bacteria's which are being present in the atmosphere. Global Warming is also increasing day by day which is in turn decreasing the oxygen level and increasing carbon dioxide into the air we breathe due to which several health issues are coming up amongst the people who are living in India. Following are some of the problems due to degradation of environment:

1. The natural resources have become extinct and some of them are being degraded day by day
2. The habitat of many animals has been removed from the environment making the animals endangered
3. Less no. of forests is left in the name of nature
4. Causing up lot of pollution
5. Large buildings which have been set up is not letting the fresh air to come
6. Many health issues have been increased and the recent one which can be seen through the reports is the COVID 19 i.e. the Corona Virus

The above stated are some of the major problems which is being faced by the people who lives in the country. There are many factories which erode out the smoke of the industries which in turn also pollutes the environment. Hence it can be rightly assumed that the disturbance caused to the environment is because each and everyone living in the country. Owing to this fact the 42nd amendment was introduced through which the environment is getting protected because it is one of the fundamental rights of the people which is being given by the constitution of India to live a pollution free life in India.

II. CONCLUSION: -

In this paper we have observed that environment has been preserved since the ancient period of India. The 42nd Amendment of the Constitution has mainly concentrated on the protection of the environment. After the amendment the duty lies upon the state and the citizens to preserve and improve the environment. Connecting human rights and environment is a valuable sourcebook that explores the uncharted territory that lies between environmental and human rights legislation. Human beings will guarantee basic equality associate decreed adequate conditions of life in an surroundings that allows a lifetime of dignity and wellbeing. There is associate degree imperative got to formulate laws keeping in mind the actual fact that people who begrime or destroy the natural surroundings don't seem to be simply committing against the law against nature, however square measure violating human rights furthermore. Indeed, health has looked as if it would be the topic that bridges gaps between the 2 fields of environmental protection and human rights. The advancement of the link between human rights associate decreed surroundings would modify incorporation of human rights principles inside an environmental scope, admire antidiscrimination standards, the requirement for social participation and therefore the protection of vulnerable teams.

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