

CONSTITUTION AND ENVIRONMENTAL LAWS MEASURES TO COMBATE ENVIRONMENTAL ISSUES

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Abstract

Our planet Earth is most unique, distinguish planet as it harbors the life. Earth has got an environment which is the natural world surroundings. Environment plays a significant role in existence of life as its component air, water, land, forest etc. are the essential of life. But due to Industrial revolution, the base formula of the environmental components is disturbed as result of which causing many side effects on the globe as whole.

The Global warming alarmed the preservation and conservation of environment for the coming generations. Indian Constitution is the most detailed constitution in the world, still it's evident from its construction that the thought of environment had been in the minds of Founders of Constitution.

In current scenario the Constitution mandates certain duties on State as well as the Citizen of India, to protect the Environment. Also the judiciary in many of its judgments has recognized the right to healthy environment as the Fundamental Right.

This paper will highlight the various environmental issues, its impact not only in society but also to all living beings, also the Constitutional Provisions for preservation and conservation of Environment.

INTRODUCTION

The expression "environment" literally means our surroundings. This surrounding comprises of air, water, food, sunlight etc. the environment is the life support system and it cannot be ignored at any cost. However, it is to be noted that the environment has virtually remained untouched for millions of years. The revolutionary mode of human life resulted unbalancing of components of "environment". When the rights of human are violated the laws are enacted to safeguard his rights, the need was felt to personify environment and safeguard it

Environment basically consist of three kinds of components, that is Non-living or abiotic component (Lithosphere, Hydrosphere, Atmosphere), Living or biotic component (Flora and Fauna) and Energy component (solar energy, atomic energy, radiation). The important reasons for degradation can be classified broadly as economic, social, technological etc. the major underlying reason can be said as the population growth and the urbanization due to industrial revolution. Any harm to the component of environment is term under pollution, "Pollution" can be understood as any substance or activity capable to damage or causing injury lowering the environmental quality.

The urbanization, population growth, indiscriminate use of pollutants, industrial development, discharge of pollutants, unmindful disposal of excreted and waste water proved to be important

reasons for environmental pollution. By this time it was crystal clear that directly or indirectly human was root cause of the degradation of environment and a need was felt to combat the environmental issues by creating standard of interaction between human and environment. The environment protection needed a immediate attention worldwide. The United Nations' General Assembly took a vital step by proclaiming to convene Stockholm Conference of 1972. All the member nations of UNO were mandatorily to borrow and implement the environmental legislation in their Constitution. In pursuance of this India adopted certain laws and provisions in Constitution. Indian Legislation has not only vested liability of environmental conservation on individual but also the State is bound to preserve the environments and its heritage¹.

In the Stockholm conference it was mandated to all member nations to implement the environmental laws in respective countries. In furtherance of it, Article 48-A of the Constitution of India was inserted (42nd Constitutional Amendment, Act, 1976), comprising of Directive Principles of the State Policy that states that "the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the Country". Also Article 47 of the Indian Constitution lays down the duty on the state for improvement of public health .

Not only the state was mandated to protect the environment under Article 48-A but also all the citizen were assigned with Fundamental duties. Under Article 51-A (g) was inserted which states 'to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for leaving creature.' This duty was assigned in order to arouse amongst the people, the consciousness of cleanliness of environment, it suggested the desirability of organizing

Article 21 of Indian Constitution deals with 'Protection of Life and Personal Liberty' now the ambit of the article have been enlarged, right to get pollution free water and air, have included in it Under Article 21, it is the most important article in the Indian Constitution, it can be understood that all the articles are subsiverent to this Article 21. The right to life includes right to health, right to food, right to pollution free environment, etc. the judiciary have broadened and expanded the meaning and scope of article 21. In the Rural Litigation and Entitlement Kendra v. State of U.P (1985) 2 SCC 431 the court ordered the closure of certain lime stone quarries on the ground that there were serious deficiencies regarding the safety and hazards. The committee was appointed for inspecting the lime stone quarries and the committee felt that there was great hazard and it was adversely affecting the safety and health of the people around, so it suggested the closure of certain lime stone quarries. In Bhopal Gas leak disaster case, a leakage of chlorine gas from the plant which resulted causality, great pain, hazardous and hardship to the people in vicinity and the workers. The leakage was resulted due to the negligence of management in the operation of the plant. The theory of 'Absolute Liability', was applied as the enterprise engaged in hazardous activity and have to compensate for any harm caused by the activity .

In M. C. Mehta v. Union of India (1988) 1 SCC 471 the public interest litigation was brought against the Ganga water pollution which was widespread public nuisance affecting the lives of large number of persons and therefore any particular person can take proceedings to stop it as distinct.

In a very well known case of Indian Council for Enviro-Legal Action v. Union of India (1996) 3 SCC 212, the petitioner, the Indian Council for Enviro Legal brought an action to prohibit and remedy the pollution caused by several chemical industrial plants in Bichhri village, in Rajasthan. The Respondents here operated heavy industrial plant which produced chemicals like oleum. The toxic water was also left untreated and it caused the pollution of soil leading to the imbalancing of soil constituents. The soil was losing the productivity and became unfit for cultivation. People in nearby villages were contracting diseases. The Supreme Court came up with the 'Polluters Pay', where an

¹ Environmental Law book- Dr. S. C Tripathi

enterprise needs to compensate for hazardous activity which result in any harm to human or environment..

In *Vellore Citizen's Welfare Forum v. Union of India*(1996) 5 SCC 650, the petitioner, Vellore Citizen's Welfare Forum, filed writ petition by way of of public interest litigation drawing the attention of the Court towards the pollution caused by enormous discharge of untreated effluent by the tanneries and other industries in the State of Tamil Nadu. It was said that the tanneries are discharging untreated affluent into agricultural fields, open lands and rivers rendering the river water unfit for human consumption, contaminating the subsoil water and spoiled the physic-chemical properties of the soil making it unfit for agricultural purposes.

In *M.C. Mehta v. Union of India* (2004) SC 4016 the petitioners challenged the order of the Supreme Court that banning all running activities and pumping of ground water within the area of 5 kms. Of Aravalli hills. Evidently there was unscientific mining activity resulting in materials haphazardly. The petitioners contended that they have invested large sums of money in mining operation. The Supreme Court having regard to enormous degradation of Aravalli Hill range denied lifting the ban on mining activities. However it adopted a safer way by constituting monitoring committee to get a report and mining activity was imposed on the basis of sustainable development and on compliance of stringent conditions.

In *Hinch Lal Tiwari v. Kamala Devi and others*, Apex court held that material resources of community like forests, ponds, hillock, mountain etc. are nature's beauty. These resources maintain the delicate relation in the ecological factors and these needs to be protected for a healthy environment. As the Fundamentals right 21 guarantees right to quality life. Material resources of the community need protection for the healthy environment which enables quality of life being the essence of the right guaranteed under Article 21 of the Constitution of India.

In *Taj Trapezium Pollution case i.e. M. C. Mehta v. Union of India and others* (2001) 9 S.C.C 338, the Sulphur Dioxide emitted by the Mathura Refinery and other industries when combined with Oxygen with the help of moisture in the atmosphere formed sulphuric acid also called "Acid rain" which effected the colour of the gleaming white marble of Taj Mahal.. The Apex Court applied the principle of Sustainable Development in this case observing that there needs to be a balance between economic development and environmental protection. The Supreme Court has assumed a proactive role and agreed and support that liberal use of the public interest litigation in protecting fundamental environmental interests. The court also issued the direction that no new license shall be issued for the establishment of brick kilns within 20kms. Radial distances from Taj Mahal or other monuments in Taj Trapezium and Bharatpur Bird Sanctuary.

The Supreme court has laid down a doctrine of "Public Trust" as per which the natural resources of the state are to be hold down by the State as the trusts of the public. However, under the Article 48 Directive principles the state is required to take steps to protect and improve the environment and to safeguard the forests and wild life of the country. To accomplish the task the Wild Life Protection Act, 1972 and the Indian Forest Act,1927.

In *M.C. Mehta v. Kamal Nath* was dealing in which with certain forest land was to be leased to the Motel, by the state government, situated at the bank of River Beas. It was said the area was ecologically fragile and highly bloomed with full of scenic beauty should not have been permitted to be converted into private ownership and for commercial gains. The Hon'ble Supreme Court pointed out that the State is the trustee of all natural resources which are by nature meant for the use and enjoyment of the general public. Public at large is the beneficiary of the seashore, running waters, airs forests and ecologically fragile lands they have the right to access and enjoyment of such resources.

The state is the trustee to such public resources and consequently it is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.

Suggestion and Conclusion- The Constitution of India has been amended to save the environment and also to promote the Fundamental Right under Article 21 of a citizen. But in today's scenario global warming is alarming the Legislation should come up with more mandatory provisions to uplift the concept of Sustainable Development.

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