

Constitution of India on Protection of Environment: Legal Discourse

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Abstract: *Constitution of India provides provisions for social economic and political justice to all its citizens. Environmental justice is an important connotation of such a concept of justice. This paper endeavours to state the development of law for protection of environment by the Courts of law through the extensive interpretation of the term 'life' in Article 21 of the Constitution of India. It further illustrates the precious rights of common citizens on environment developed by the judicial precedents. The paper concludes that these rights conferred by Article 21 of the Constitution of India finds place in the vision of the documents resolved in the Stockholm (1972) and Rio Conferences in the year 1992 and 2012.*

Keywords: Environment; Fundamental rights; Life; Nature; Ecosystem

1. Introduction

Our planet earth is a part of Milky Way Galaxy. It came into existence in this Universe through innumerable processes that were of divine origin. This is a dynamic World. Earth is moving around the Sun, other planets are also moving around the Sun, there are changes in the temperature and weather conditions, there are changes in the environment due to natural disasters and concurrently, scientific experiments are being done continuously to discover better and better ways of living.

Science has made innumerable inventions from landing on moon to the discovery of live wireless electricity, some of which are prominently used today in daily life. It has made possible such imaginations that were even declared to be impossible at a particular instance of time.

However, according to scientific researches, the temperature of our planet earth was below zero degrees Celsius at the time of its origin and it is increasing regularly since then. Whether the cause is degradation of environment both due to natural disasters and activities performed by man? I think the damage to environment by natural disasters may be a natural process to achieve the end which the dynamics of nature deem to achieve. But we must try our level best to control the degradation caused by human interventions.

This paper attempts to explain the law relating to environment protection and Constitutional obligations on the citizens to follow them.

Environment Protection Act:

Section 2 (a) of Environment Protection Act, 1986 defines the term 'environment' as - "Environment includes water, air and land and the inter - relationship which exists among and between water, air and land and, human beings, other living creatures, plants, micro - organism and property. "

The term environment is derived from the Latin word 'environner' which means "to surround".

C. C. Park defined the term environment in following words:

"Environment refers to the sum total of conditions which surround the men at a given point in space and time. "¹

The environment is required to be protected because according to scientific researches, 'whatever is natural, is most appropriate and essential for human survival'.

Causes of environmental degradation in British India

In British India, there were immense natural resources and forest cover was hundred times more than that is currently in years 2014. Many of the natural resources like coal, petroleum, natural oil, timber were the good sources of raw material for the industries in 16th and 17th century. Industrial Revolution took place in Europe, so the industrialists were interested to get raw materials in huge quantities and at cheaper prices. In the year 1600, Britishers came to India for doing trade. However later they made India a British Colony and thereby assumed power of governance in their hands. They started exploiting our natural resources and destroyed our forest cover on the pretext of developmental activities or by their arbitrary rules which were determined to fulfill their self interest. For example - one of the rules imposed was "to cut existing forest cover where there is a mixture of vegetation and to plant a particular species in rows in specific areas". By this rule, their officials got permission to cut the trees and its timber was transported for industrial purposes to foreign countries.

Indian Independence and Constitution:

India got independence in the year 1947. India is a country run by rule of law. Constitution of India (hereinafter 'Constitution') is lex loci i.e. law of the land. After 1947, the responsibility to consent and upgrade the environment become vested on India.

Preamble to the Constitution states:

"WE, THE PEOPLE OF INDIA, have solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC AND TO SECURE TO ALL ITS CITIZENS:

¹Myneni, Dr. S.R., "Environmental Studies", (2008 edn. reprint 2013; Asia Law House, Opp. High Court).

Justice: social, economic and political;

Liberty: of thought, expression, belief, faith and worship,

Equality of status and opportunity; and to promote amongst them all

Fraternity: assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty sixth day of November 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

The term “socialist” in the Preamble to the Constitution connotes that the State shall distribute the resources of the country according to equity (need of a person) and such distribution shall be strictly according to law.

Further Preamble secures **JUSTICE** - social economic and political.

According to AarthikSarvekshan 2014 report, 50% of the population of India is dependent on agriculture for their survival. Therefore the state indirectly took and takes pledge to secure the environment in benefit of these people by securing economic **justice** to all.

The term “**economic justice to all**” is further widened by the term “equality of status and of opportunity”.

Constitution of India confers six Fundamental Rights to the citizens of India, namely -

- 1) Right to Equality (Article 14 to 18)
- 2) Right to freedom of speech and expression (Article 19 - 22)
- 3) Right against exploitation (Article 23 and 34)
- 4) Right to Freedom of Religion (Article 25 to 28)
- 5) Cultural and Educational Rights (Article 29 and 30)
- 6) Right to Constitutional Remedies (Article 32)

Of these article 21 has gained importance by the interpretation of Honourable Supreme Court of India on Environmental Rights.

Article 21: Protection of life and personal liberty -

No person shall be deprived of his life or personal liberty except according to procedure established by law.

In *Maneka Gandhi v. Union of India*², Honourable Supreme Court of India held that -

“Life does not mean mere animal existence. It means right to live with dignity.”

India is a developing country. Development is in one way exploring better conditions of living but is on the other, degrading the existing environment in certain places. Therefore we as a responsible citizen of the Nation, should abide by rules relating to environment protection and try to conserve and upgrade the existing environment as best as possible.

² AIR 1978 SC 597

Article 21 of the Constitution protects right to life as a Fundamental Right. Enjoyment of life and its attainment including their right to life 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 life cannot be enjoyed.³

Constitutional obligations on state to protect environment:

The interpretations of Honourable Supreme Court of India on Environmental Rights of the citizens as a Fundamental Right under article 21 of the constitution of India is as under:

1) Right to sleep and leisure -

held in *Burrabazar fireworks Dealer association v. Commissioner of Police, Calcutta*⁴.

2) Right to life comprehends right to a safe environment including safe air quality, safe from noise - held in *Jacob v. Superintendent of Police*⁵.

3) Environmental pollution, ecological pollution, water pollution, air pollution, etc. should be regarded as amounting to violation of Article 21 of the Constitution of India. held in *VirenderKaurv. state of Haryana*⁶.

Article 48 of the Constitution of India states that “the State shall endeavour to organize agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter of cows and calves and other milch and draught cattle.”

In *Mohd. Kuraishiv. State of Bihar*⁷, Court held that cow slaughter is prohibited in the state of Bihar by Cow Slaughter (Prohibition) Act and further the petitioner is abstained from doing so under Article 48 of the Constitution of India.

Court held that right to religion is subject to **public order, health and morality**. Therefore cow slaughter cannot be done on the name of a religious norm.

Stockholm Conference⁸ 1972 Resolution On 'Human Environment':

The United Nations organized a Conference on **Human Environment** from 5th to 16th June, 1972 at Stockholm. Therefore, this Conference is generally known as Stockholm Conference.

³Kataria, R.P. and Awasthi, Dr. S.K., “Law relating to Protection of Human Rights”, Orient Publishing Company, New Delhi and Allhabad; millennium edn., reprint 2001.

⁴ AIR 1998 Cal 121 at 136

⁵ AIR 1993 Ker 1

⁶(1995) 2 SCC 577.

⁷ AIR 1958 SC

⁸<http://resources.spaces3.com/631e9a3e-f2f1-4fd8-ba02-d8e46e215cc.pdf>

This conference has been organized to discuss the present condition of the environment, cause of such deteriorated condition and to find remedial measures for the well - being of present as well as future generations. This Conference does not confer any Environmental Right to a citizen. This Conference convened into a document on 'Human Environment' which provides 26 Principles aimed at stating the Fundamental Rights of a human being and the regulations that should be made for maintaining and improving the conditions of environment.

Principle 1 and Principle 2 of the Stockholm Conference reads as under:

Principle 1

Man has the fundamental right to freedom, equality and adequate condition of Life, in an environment of a quality that permits a life of dignity and well - being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregations, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated.

Principle 2

The natural resources of the earth including the air, water, land, flora and fauna and especially representative samples of natural ecosystems must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.

Changes made by the Constitution 42ND Amendment Act, 1976:

The 42nd Constitution Amendment Act, 1976 is also known as the mini - Constitution because it had made amendments in maximum provisions of the Constitution of India.

The 42nd Constitution Amendment Act, 1976 appended Articles 48 - A and Article 51A (g) in the Constitution of India. Part IV of the Constitution comprises of Directive Principles of State Policy from Article 36 to 50. According to the recommendations made by Swarna Singh Committee, Part IV - A entitled **FUNDAMENTAL DUTIES** has been appended in the Constitution of India by 42nd Constitutional amendment Act, 1976. The fundamental duties are stated in Article 51 - A of the Constitution.

Article 37 of the Constitution of India states that “the provisions contained in this Part shall not be enforceable by any Court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of every the State to apply these principles in making laws.

There is no express statement that the provisions of Fundamental Duties cannot be redressed in the Court of Law but since it is the duty of the citizens to follow it and this Article 51 - A is appended in the Part IV - A of the Constitution of India, therefore it is implied that for not following the provisions of Part IV - A, there cannot be any legal action against an individual. I think that here Part IV - A is considered *ejusdem generis* in this respect.

Article 48A of the Constitution of India states that:

Article 48A: Protection and improvement of environment and safeguarding of forests and wild life - The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

Constitutional obligations on the citizens of India to Protect Environment:

Clause (g) to article 51A of the Constitution of India defines one of the Fundamental duties. It reads: “It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. ”

In *Sachidanand Pandeyv. State of West Bengal*⁹, Honourable Supreme Court of India gave a very important judgment with respect to protection of environmental rights of the citizens and protection of the environment.

Supreme Court held that “**whenever the problem of ecology is brought before the Court, the Court is bound to bear in mind Article 48 - A and Article 51A (g) of the Constitution of India.** ” case - *Mohini Jain v. State of Karnataka*¹⁰

Honourable Supreme Court held in para 9 of the judgement in Mohini Jain’s case that “**both Fundamental Rights and Directive Principles of State Policy are supplementary and complementary to each other**”.

These judgments connote that the Court can enforce the Fundamental Rights of citizens by interpreting the Directive Principles of State Policy and Fundamental Duties with respect to the Fundamental Rights. This has become possible as a result of Judicial Activism exercised by the Honourable High Courts and Supreme Court of India.

Rio De Janeiro Conference 1992¹¹ on 'environment and development':

The United Nations Conference on Environment and Development was organized at Rio de Janeiro from 3rd to 14th June 1992. It reaffirmed the Declaration on Human Environment made by the Stockholm Conference and stated 27 Principles on duty of the State to protect the environment, and to encourage the citizens to maintain and improve the environment. Some of the principles of the Rio Conference resolution on environment and Development are:

Principle 4

In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

Principle 7

⁹ AIR 1978 SC 1109

¹⁰ AIR 1992 S.C. 1858

¹¹<http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>

States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.

[4] <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>

Legislation/ Documents Referred:

- [1] Constitution of India.
- [2] Environment Protection Act

Principle 11

States shall enact effective environmental legislation. Environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply. Standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries.

Principle 20

Women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development.

2. Conclusion

The citizens of India are bound to protect and improve the environment by the Constitution and environmental legislations. Concurrently, the State is also bound to protect and improve the environment in order to protect the Fundamental Rights of its citizens.

The Stockholm Conference 1972, Rio Conference 1992 and 2012, the Johannesburg Declaration of 2002, Durban Platform for Enhanced Action 2009 or the Paris Agreement 2015 aims to explicitly state the inter dependence of man on environment and the natural resources with the assertion that hazardous consequences would ensue if such natural cycles are not given due credence. However, environment protection is primarily limited to safeguarding the rights of citizens and is more intertwined in the subjective richness of the social strata against the oppressed groups?

I think the rights of citizens and the environment will be definitely protected if every person considers protection of the natural resources and the environment to be its solemn duty rather an obligation of the State.

References

Books Referred

- [1] Myneni, Dr. S. R., "Environmental Studies"; Asia Law House, Opp. High Court, hyd - 2; 2008 edn. reprint 2013.
- [2] Kataria, R. P. and Awasthi, Dr. S. K., "Law relating to Protection of Human Rights", Orient Publishing Company, New Delhi and Allhabad; millennium edn., reprint 2001.
- [3] <http://resources.spaces3.com/631e9a3e-f2f1-4fd8-ba02-2d8e46e215cc.pdf>