

ENVIRONMENTAL PROTECTION UNDER THE CONSTITUTION OF INDIA❖ **Dr. Basuki Nath Dubey**

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Abstract: The term 'environment' generally connotes surroundings. However, a more specific meaning which has been assigned to the term 'environment' covers the physical surroundings that are common to all living beings and include air, space, water, land, plants, wildlife, flora, fauna etc.

Section 2(a) of the Environment protection Act, 1986 defines 'Environment' which includes "water, air, land and the inter-relationship which exists between them on the one hand and human beings, livings creatures, plants, micro-organism and property, on the other."

The term 'Pollution' is derived from the word 'pollute' which means to make foul unclean or dirty. Thus ,pollution may be defined as "The release of substances and energy as waste products of human activities which result in changes usually harmful, within the natural environment"¹.

According to the United States Councils on Environmental Quality, Environment means man's total environmental system including not only the biosphere, but also his interactions with his natural and man made surroundings.

Key Words: man made, pollution, substances

Introduction

The Indian Law defines environmental pollution as "The Presence in the environment of any environmental Pollutant"² and as per the provisions of the Act. "Environmental Pollutant" means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment."³

In England no cause of action is allowed to an individual if there is no direct injury. In the Common Law, the individuals should be personally injured by the act of pollution in order to get a relief by way of either monetary compensation or injunction, Even in the cases of public nuisance an individual will be given standing only if he has suffered personal injury.

However , an individual can bring action against public nuisance and against breach of any public law in a class of actions called relater actions. Private individuals bring an action with the consent of the Attorney

General who is assumed to represent public interest,⁴

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- 1. T.N.Godavarman Tirumalpad V.Union of India,(2002)1 in SCC606
- 2. Environment(protection) Act, 1986, section 2(c).
- 3. Ibid, Section 2(b)
- 4. Attorney General V.P.Y.A. Quarries (1957) 2.Q.B. 169.

The supreme Court of India held that relator action is not possible in India as in England because the Attorney General and Advocates General of states are not the guardians of public interest⁵

Kautilya , The Prime Minister of Magadh during The regime of Chandra Gupta Maurya, 300 B.C in his 'Arthshastra' exhaustibly dealt with the question of environment protection.

He laid down the rules for protection and upgradation of environment minutely, meticulously and with great details. Mouryan king Ashoka depicted exemplary compassion for wild life and prohibited killing of certain species of creatures.

We find preaching of compassion towards nature in all religions. "Don't make mischief in the earth" Says Holy Quran. All the religion of world teaches that we should save the nature. The colonial rule, however, disregarded ancient prudence, cultivated ruthless intelligence to exploit environment for their material gain. The legacy of imperialism and colonialism, concealing a sense of ownership over environment, Propogated its consumption for wealth. Growth of industrialization and lack of awareness to handle the fast pace of development, has brought into focus many environmental issues end in its response environmental legislations. In this paper we discussed about the constitutional provisions for the protection of environment.

Environmental protection has found a special mention in the Indian Constitution. In fact, The environment protection has been given constitutional states in the Indian polity. The constitution being the fundamental law of the land has a binding force on citizens, non citizen as well as the state. The fundamental rights and the directive principles of state policy underline our national Commitment to protect and improve the environment. The courts in India have also given a new interpretation to the constitutional provisions touching the environmental perspectives. In fact, The interpretation given to article 21 of the constitution which is contained in the chapter on fundamental rights has added new dimensions to the quality of life and the effect of environment relating thereto.

The preamble starts with the words, "we, The people of India which indicates the source from which the constitution comes, i.e. The People of India. Thus, we the people are solely responsible for constituting India into a "sovereign, socialistic, secular, Democractic,

Republic" and in this we find a glimpse of the concern for the society as in such a society the state pays more attention to the social problems than any individual problems. Environmental pollution which has emerged as one of the biggest social problems is being regarded as a real problem affecting the society at large and thus the state is under an obligation to fulfil the basic aim of socialism i.e, to provide decent standard of living to all Indians which cannot be possible without a pollution free environment.

Further, the preamble declares the great rights and freedoms which the people of India intended to secure to all its citizens, first of all justice, social, economic and

5Adi Pheroza V.H.M seervai AIR 1971 S.C 385, per Mitter J.at 406

political. Here justice includes environmental justice. Although the particular word 'environment' does not find a place here, we can very well interpret this to include environmental justice. When we discussing about socio-economic or socio-political scene of the country we cannot deliberately ignore the environmental matter.

Thus, when we talk of social, economic or political justice we must include environment as it has become a part of the social structure. The state, therefore should endeavours to take all necessary steps to secure its citizens environmental justice.

The Constitution of India, as originally enacted did not contain any spesfic provision to deal with environmental pollution though Article 47 made an indirect reference to improvement of public health as one of the primary duties of the states. This, in fact, envisages a pollution free environment for all the people. But this is also true that India is the first country which has provided for environmental protection by the constitutional amendment brought in the year 1976. Articles 48-A and Article 51(A) (g) were inserted by this amendment.

Article 48-A provides that the state shall endeavour to protect and improve the

environment and to safeguard the forests and wildlife of the country.

Article 51-A (g) makes it a duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures

India, being a signatory to various international conventions and agreements relating to environment issues, it is under an obligation to adopt them in its domestic laws. This is in accordance with provision contained in Article 51(c) of the constitution which provides that "The state shall endeavour to foster respect for international law and treaty obligations in the dealings of organised people with one another"

Article 253 empowers the Parliament to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

Entries 13 and 14 of the Union List in the VIIth schedule to the constitution (List-I), which contain subjects matters over which the Parliament can make laws, also provides "Participation of India in international conferences, associations and other bodies and implementing of the decisions made thereat." And entering into treaties and agreements with foreign countries and implementing them Accordingly, India as a state party to the International covenant on Economic, social and cultural Rights, is committed to follow the provision of Articles 12(2) of the covenant which requires

The state parties to take steps to achieve the full realisation of right to enjoy healthy life which shall include the improvement of all aspects of environmental and industrial hygiene.⁶

Thus the provisions of Article 253 and entries 13 and 14 of list I (Union list) read together empower the parliament to make

laws on protection of environment as it has the legislative competence to do so.⁷

The state also has similar power to make laws on subject matters having environmental impact as contained in entries 5,6,14,16,17 and 24 of the state list (list II)

In case there is a conflict between the law made by the parliament and the state on a subject related to environment, the central law shall prevail as provided in Article 254 of the constitution.

At the time when the constitution was enforced, The subjects dealing with forests and protection of wild life and birds were included in the state list (List-II) which enumerates Subjects over which the state legislature has jurisdiction to make laws. But these subjects were transferred to concurrent list⁸ i.e. list III by the constitution 42nd Amendment Act,1976. It was perhaps with the purpose of having a uniform policy on these subject which are directly related to ecology and environment.

According to the Stockholm Declaration, 1972 every person has fundamental right to a standard quality of environment that permits a life of dignity and well-being and has a solemn responsibility to protect and improve the environment for present and future generation.⁹ This principle of Stockholm declaration is directly related to the right to life and personal liberty, equality, freedom of expression and right to trade and commerce guaranteed under the constitution of India. Any act of polluting the environment will be violation of fundamental rights conferred under part-III of the constitution specially by The interpretation of judiciary under Act 21 of the constitution.

Part-III of the constitution of India incorporates fundamental rights which have been made judicially enforceable .¹⁰ The supreme court of India has contributed significantly especially during the decade of 1980 in broadening the contents of some of these basic rights .

Here an attempt is being made to examine this perspective in the context of environmental protection .

6. India was an active participant in Stockholm conference of 1972 and the Rio earth summit 1992 in Rio . de-janerio

7 Any parliamentary legislation without legislative competence can be challenged under Article 32 or . Article 226 and can be struck down by court's power of judicial review.

8. entry 17-A deal with 'forests' and entry 17-B with the protection of wild animals and birds. A new . . entry 20-A was also added by the 42nd constitution Amendment which deals with population and .family planning as population was considered as the greatest pollutant of environment.

9. Principle 1 of Stockholm Declaration, 1972

10.Art 32 of the constitution of India

Right to live in a healthy environment

The interpretation given by the supreme court in Maneka Gandhi¹¹s case has added a new dimensions to the concept of personal liberty of an individual. It laid down that a law affecting life and liberty of a person has to stand the scrutiny of Articles 14 and 19 of the constitution. In other words, if a law is enacted by a legislature which touches upon the life and liberty of a person and curtails it, then it is a mandatory requirement that the procedure established by it for curtailing the liberty of a person must be reasonable, fair and just. It is this interpretation of article-21 which the court has extended further so as to include the right to a wholesome environment.

In other words, environmental pollution which spoils the atmosphere and there by affects the life and health of the person has been regarded as amounting to violation of article 21 of the constitution.

In this connection it will be worth while to refer to the decision of the apex court in Dehradun Quarry's case.¹² In this case the Supreme Court entertained complaints from the rural litigation and entitlement Kendra Dehradun alleging that the operations of

limestone quarries in the Mussoorie – Dehradun region resulted in degradation of the environment affecting the fragile ecosystems in the area. In this case The supreme court moving under Article 32 ordered the closure of some of these quarries on the ground that these were upsetting the ecological balance though the judgement did not make a reference to Article 21 but involving of jurisdiction by the court under Article 32 presupposed the violation of right to life guaranteed under article 21.

This way, we see that the courts are legitimizing its role as the enforcing organs of the Constitutional objectives to prevent all actions of the state and the citizen from upsetting the ecological balance. This role of the court also finds supports from the observation of justice K.N. Singh in the Ganga pollution(Tanneries) case¹³ where a group of tanneries doing business on the banks of the river Ganga were alleged to be polluting the river. His lordship observed. "we are conscious that closure of tanneries may bring unemployment, loss of revenue, but life, health and ecology have greater importance to the people"¹⁴

In a subsequent case namely M.C.Mehta V.Union of India¹⁵.The supreme court reiterated that right to live in pollution free environment is a part of fundamental right to life under Article 21 of the constitution.

T. Damodor Rao V.Municipal Corporation, Hyderabad¹⁶, that environmental pollution undoubtedly amounts to violation of Article 21 regarding right to life.

11. Air 1978 SC 597

12. AIR 1985 SC 652

13. M.C. Mehta V. Union of India, AIR 1988 SC 1037

14. Ibid, at P. 1048

15. AIR 1987 SC 1086 (Oleum gas leakage case)

16. AIR 1987 AP 171

In Consumer Education & Research centre V. Union of India¹⁷. The Supreme Court expanded the scope of fundamental Right under Article 21 and held that right to health, medical care and vigour to work while in service or in post retirement life as a fundamental right under Article 21 and must be read with Article 39(C),41,43 and 48-A of the Indian constitution.

The Supreme Court affirming its earlier rulings once again held in the case of M.C. Mehta V. Union of India¹⁸ The Supreme Court directed that there is need to control and regulate traffic, Particularly in N.C.R and N.C.T, to minimise Pollution and protect environment as vehicle emissions were causing a threat to human health which was violative of Article 21 of the constitution.

In P.A. Jacob V. suptt. of police, Kottayam,¹⁹ The Kerala High Court held that noise pollution beyond reasonable limit is violation of Article 21 of the constitution. According to High Court “ compulsory exposure of unwilling persons to dangerous and disastrous levels of noise would amount to clear infringement of their constitutional guarantee of right which comprehends safe environment including air quality, safe from intolerable noise.”

Vellore Citizen Welfare Forum V. Union of India²⁰ (Tamil Nadu Tanneries case), it was held that in view of the constitution provisions contained in Article 21,47,48-A,51-A(g) and other statutory provisions of water (control & prevention of pollution) Act, 1974, The Air (control & prevention of pollution) Act 1981, the environment (protection) Act, 1986, The two salient principles of sustainable

development i.e. (i) precautionary principle and (ii) Polluter pays principle are part of environmental law of India and are included in right to life under Article 21 of the constitution.

The Rajasthan High Court in L.K.koolwal V. State of Rajasthan²¹ observed that “we as real citizens of the country should strive towards excellence in all spheres of undivided and collective activity including protection of environment.

In the case of Goa Foundation V.State of Goa²² The court held that the society which registered under the Registration of societies Act, has locus standi to move to the court to prevent ecological degradation under Article 51(A)(g).the Court further held the at registered society has the locus to file a PIL for performing duty envisaged by article 51(A)(g) to a citizen and it also has a similar duty of protection and improvement of environment

17. AIR 1995 SC 922

18. AIR 1998 SC 186

19. AIR 1993 Ker

20. (1996) 5 sec 647. See also A.P.Pollution Control Buard II V.M.V.Nayudnil (2001) 2 sec 62.

21. AIR 1988 Raj

22. AIR 2001 Bom 318.

.So we can say environment is precious from ancient time and now in pious constitution there are various provision like preamble, Fundamental rights ,directive principles and Fundamental duties which directly or indirectly enable Judiciary to give remedy by interpretation of Article 21 pollution free environment is as a fundamental right .

