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Environment Protection and Indian Constitutional Law

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ABSTRACT

Our cultural beliefs and traditions include environmental preservation, and a sound environment is essential to the welfare state. One of the major social issues with lasting impacts on society is environmental degradation. The basic objective of socialism, which is to ensure that everyone has access to a decent level of living that is attainable in a pollution-free environment, must now be accomplished by our country. Our Constitution's preamble, which is built on a "Socialistic" social structure and emphasizes social issues, states as much. The Indian Constitution did not initially make any explicit provisions for environmental preservation because of the "The Stockholm Conference" and the growing knowledge of the environmental crisis led to the Indian government passing the 42nd Amendment to the Constitution in 1976. "The Environment (Protection) Act of 1986" defines environment as "the interrelationship that exists among and between air, water, and land and humans, other living organisms, plants, and microorganisms." Currently, Articles 14, 19, 21, 48A, 49A, and 51A of the Indian Constitution clearly require every citizen to protect the environment. Knowledge of constitutional provisions pertaining to environmental protection is necessary to increase public participation and environmental consciousness, thereby sensitizing the populace to preserve ecosystems and the environment.

Keywords: *Environmental protection, Indian Constitution, Democracy, Pollution, Sustainable development, Natural resources.*

I. INTRODUCTION

Environmental ethics have always played a significant role in Indian religious systems and philosophies. The preservation of the natural world especially of forests has long been a component of Dharma. The reverence for the natural forces that supported and preserved human life on earth, including the Sun, Moon, Earth, Air, and Water, was not just a primitive man's reaction to his dread of the unknown.²Based on the conviction that life is a singular, continuous, and uniform phenomena and that even a little alteration to any one aspect of the eco-system is

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² <https://www.shivajicollege.ac.in/sPanel/uploads/econtent/abff7abe108cb9996992f15088341247.pdf>.

likely to have repercussions elsewhere, people have a deep reverence for nature. "Pawan Guru, Pani Pita Mata Dhart Mahat, Divis Raat Doi Daia, Khele Sagal Jagat," declared Guru Nanak, the founder of the Sikh religion (1469–1539). (Air is like God, Water is like the father, and Earth is like the mother.) These three crucial components work in perfect harmony to support the entire cosmos.

India has both observed and contributed to the global environmental deterioration that has resulted from growing urbanization, industrialization, and a fall in social values. The fundamental human right of every person to live in a pollution-free environment with full human dignity has been elevated to the status of key national legislation in India. Additionally, environmental protection has been integrated with a human rights viewpoint. The Indian Apex Court has emphasized that the fundamental elements of "sustainable development" such as the "Polluter Pays" Principle and the "Precautionary Principles," are also included in the nation's environmental legislation³. Citizens and the "State" are required by the Constitution of India to protect and enhance the natural environment⁴.

The Constitution of India is a living document that reflects the values, aspirations, and ideals of our independence movement. Constitutional provisions seek a clean environment, and this is reflected in their interpretation by the superior judiciary. The paper meticulously deal with the available constitution provision related to environmental protection and highlights it with landmark case laws related to it.

(A) Research Objective

- To be aware of the constitutional provisions pertaining to environmental protection.
- To analyze the higher judiciary's interpretation of those articles and the legal system established by the Constitution.
- To analyze the development of a clean, healthy environment.

(B) Research Methodology

This research paper uses the non-empirical study employed secondary data for analysis, which was gathered from online publications such articles, journals, government reports, and websites which is limited to books and the internet. Due to the nature of the subject, a primary method of research could not be used for the same.

³ Union of India v. Vellore Citizens' Welfare Forum, (1996) 5 SCC 647at 659-660 (This case is commonly referred as T.N. Tanneries Case)

⁴ Article 51-A (g) and Article 48-A of the Constitution of India.

II. INDIAN CONSTITUTION AND ENVIRONMENTAL PROTECTION

The Indian Constitution establishes a distinctive federal organization and as a lengthy piece of legislation that sets “the Directive Principles of State Policy” that the legislature should keep in mind while making laws, in addition to giving shape to the aspirations of freedom fighters by emphasizing fundamental rights. The Constitution's Part XI, which deals with legislative relations, specifies the precise allocation of legislative authority between the federal and state governments. This section discusses the environmental protections included in other sections of the United States Constitution.

(A) Preamble

In the preamble, it is said that India as a nation is based on a "Socialistic"⁵ A social framework in which the country prioritizes individual challenges over communal obstacles.⁶

It is not possible to achieve "a better and sustainable level of living for everyone" in a pollution-free environment alone, hence this is the principle's primary objective. Pollution is recognized as a social challenge. In order to establish a just social order, the constitution compels the state to pay attention to the social problem. The aim of the preamble is expressed in precise language. Additionally, the prologue highlighted that India is a "Democratic Republic."

III. INDEX OF ENVIRONMENTAL PERFORMANCE

If we see the environmental performance index in which India performance is not that great. “The Environmental Performance Index” (EPI) which is a mechanism for assessing and quantifying the environmental performance of a country's policies. The EPI of year 2018 is generated using data collected from 24 distinct environmental performance parameters where India was rated 177 out of 180 nations. “The Yale University and Columbia University”, in collaboration with “The World Economic Forum and the Joint Research Centre of the European Commission”, have produced this index. India's overall low rating was attributed to poor performance in the environment health policy and air pollution-related fatalities categories. Despite government intervention, pollution from solid fuels, coal, and crop residue burning, as well as car emissions, continues to severely damage air quality.⁷

IV. OBLIGATION TO EXECUTE INTERNATIONAL AGREEMENTS

The only way to realize the goals of all international agreements is for all relevant nations to

⁵The Term “socialist” was included to the preamble by the Constitution (Forty second Amendments) Act, 1976 vide (w.e.f. 3-1-1977).

⁶ Re Berubari Union, AIR 1960 SC 845

⁷ Pimonenko et al,2018

become signatories. India has signed most of the international agreements and treaties that deal with its regional and, sometimes, global environmental problems. Since the 1972 UN Conference on Human Environment in Stockholm, India has been an important part of the 1992, “UN Conference on Environment and Development in Rio de Janeiro” and “The 1997 Earth summit in New York”. So, India is required to put all international conferences, treaties, and agreements into its own legal system, including what was said and what was decided.

Article 51 (c) specifies that "the state shall seek to compel respect for international law and treaty obligations in the interactions of organized people and organized countries." Article 253 of the Constitution allows the parliament to "create any laws for the whole or any portion of India's territory to implement any treaty, accord, or convention with any other country or nations or any decision reached by an international conference, organization, or other body."⁸ The 13th and 14th entries on the Union's list contain subjects on which parliament can enact legislation and enable "participation in international conferences, associations, and other organizations implementing decisions taken at these conferences" and "the execution of any treaty, accord, or convention with a foreign country."⁹ As a result, it can be inferred from reading Article 253 in conjunction with Numbers 13 and 14 of the Union List that the parliament has the authority to pass or create any law, including those that protect the environment, and that this authority cannot be contested in court on the grounds that the parliament lacks the necessary legislative authority. When read in conjunction with entries 13 and 14 of the Union list and Article 253, these provisions served as powerful tools in the hands of the courts to enforce any parliamentary action. Parliament exercised its authority to pass the Air (Prevention and Control of Pollution) Act of 1981 and the Environment (Protection) Act of 1986. Both statutes' preambles make it clear that they were passed to implement the resolutions made at the 1972 “United Nations Conference on the Human Environment held in Stockholm”.¹⁰

V. THE DIRECTIVE PRINCIPLES OF STATE POLICY

The Directive principles of the state policy which was given in Part IV of the Indian Constitution also talks about the protection and preservation of the natural environment, as well as protect the nation's wildlife and forests in which state has the primary obligation. These directives' objectives include the socioeconomic goals that the nation is expected to achieve. These guiding principles are meant to lead the destiny of the nation by compelling the three branches of government to implement them: the executive, the judiciary,

⁸ See Number 13 entry in the Union List in the VII arrangement.

⁹ See number 14 entry in the Union List in the VII arrangement.

¹⁰ Friends of the earth, 1972.

and the legislature.

In 1976, the 42nd Constitutional Amendment inserted in Article 48-A a modern directive concept mandating the improvement and preservation of the Natural Environment. It reads as follows: “The State shall seek to enhance and protect the natural environment, as well as protect the nation's wildlife and forests”.

Therefore, the Constitution of India became one of the few constitutions in the world to have distinct provisions in the supreme law imposing environmental protection and improvement duties on both the states and their residents¹¹.

VI. FUNDAMENTAL DUTIES

In 1976, the 42nd Amendment to the Indian Constitution added a contemporary Part IV dealing with vital duties. Article 51-A has outlined eleven responsibilities which was added on the advice of “the Sing Swarn Committee to align the India Constitution with Article 29(1) of the Universal Declaration of Human Rights”. Article 51-A g genuinely entails the fundamental environmental obligation. It stipulates that every Indian is responsible for preserving and protecting the natural environment, including lakes, forests, wildlife, and rivers, as well as having compassion for all living things.

Article 51-A (J) stipulates that it is the responsibility of every Indian citizen to strive for excellence in all aspects of collective and individual activity, so that the nation can continually attain and strive for greater heights. Environmental protection is a fundamental obligation and a responsibility for all citizens.

Article 51-A, section g: All citizens are primarily responsible for preserving and enhancing the natural environment. In the current reality, however, pollution is not created exclusively by the exploitation of the natural environment. Corruption may appear to be a misnomer in today's industrialized and advanced civilization. It is argued and stressed that the word "Natural" should be understood in a larger sense before the word "environment." In 1976, when they were incorporated, it was suggested that citizens should be made aware of their constitutional obligations through the fundamental laws of the country. Additionally, judicial activism eventually gives the underlined objectives of the fundamental responsibilities, particularly Article 51-A, (g) regarding the environment. The Supreme Court has explained the relationship between Articles 51-A, 48-A, and 48 of the Constitution in the case “Kureshi Moti Mirzapur

¹¹ Thomas. M.N v. State of Kerala, (1976) 2 SCC 310 at 379.

Jamat Kassab v. The Supreme Court of the State of Gujarat”¹².

VII. FUNDAMENTAL RIGHTS

Part III of the Indian Constitution lists essential rights. Article 21's protection of the right to life and personal liberty is one of the most fundamental rights. Article 21 states, "No person shall be deprived of his life or liberty except in accordance with legal procedure."

In the case of “Francis Coralie v. Union Territory of Delhi”, the apex drew inspiration from Field, J.'s comment in *Munn v. Illinois*¹³, where it was decided that life is significantly more than just animal existence. Article 21 forbids not only taking a person's life, but also taking away their food, shelter, clothes, and other things that make life enjoyable. This is because the right to life includes the right to live with dignity.

In *Maneka Gandhi v. Union of India*¹⁴, the Supreme Court construed "established by law method" to show that the process must be fair, just, and logical. After this decision and the judicial activism that led to it, several rights have been brought within the scope of Article 21. In recent years, Article 21, whose potential was never recognized in the past, has been awoken from its slumber and utilized to engineer social fairness, which is one of the Constitution's objectives. Article 21, when read in conjunction with Articles 14 and 19, may serve as a substitute for all other fundamental rights as a result of liberal judicial rulings in the sphere of life and personal liberty. It is now viewed as a collection of rights. With the expansive reading of the phrases 'life' and 'personal liberty's, Article 21 has been interpreted to include the right to live in an environment that is clean and free of pollution. In the above sections, we have looked that how the Supreme Court put the right to a clean environment into Article 21 in a way that makes sense.

VIII. JUDICIAL APPROACH

The Indian judiciary has adopted a pragmatic and activist stance while interpreting constitutional issues pertaining to environmental protection. As the Indian judiciary was able to interpret the right to a clean environment as a component of “the right to life and personal liberty” guaranteed by article 21 thanks to its pragmatic approach. By using the magic wand of judicial activism and exploiting Article 21 of the Constitution, numerous unjustifiable “Directive Principles established in Part-IV of the constitution” have suddenly been resurrected

¹² (2005) 8 SCC 534 at 567.

¹³ 94 US 113 (1877).

¹⁴ AIR 1978 SC 597.

as enforceable basic rights.¹⁵, which was nearly a surplus age in the present days. Pollution is the product of industrialization and urbanization in the modern era. The wealthy and educated raise their voices against pollution, even though they are sometimes the cause of it and the impoverished and slum dwellers remain oblivious to this fact. The discharge of industrial effluents into water, the accumulation of unclean water in street puddles, the absence of sewage facilities, etc., all contribute to a gloomy water pollution situation. Air suffocating with smoke and smog produced by polluting automobiles, industries, and stubble burning has caused a great deal of air pollution, negatively impacting the health of millions of individuals.¹⁶ The legislature had adopted numerous legislation to limit and manage environmental contamination, but they were ineffective. In order to alleviate the uneducated masses from the anguish and oppression caused by increasing environmental pollution, the Supreme Court of India was compelled to interpret the right against environmental pollution as part of the right to life guaranteed by Article 21.

In ***“B.L. Wadehra v. Union of India”***, a plea was made to tell “the Municipal Corporation, Delhi and the New Delhi Municipal Corporation” to do their jobs, which include picking up trash and other waste and getting rid of it. The highest court expressed great displeasure with the pollution in the Indian capital and made the following observation that under Article 21 read with Article 48A also includes the freedom from environmental contamination and the right to a clean environment as fundamental rights. As a result, the corporation was given instructions on how to collect and dispose of rubbish to keep the city clean.

In ***“Ratlam Municipality v. Vardhi Chand”***¹⁷, This case is said to be the important case in which the supreme court take the major step toward protection of environment in which it was ruled that the limestone quarries in the Dehra Dun-Mussoorie Area must be shut down. The court recognised that the closure of limestone quarries will cause economic suffering, but it emphasised that this is the price of defending the right of the populace to live in a healthy environment with minimal disruption of natural equilibrium.

“In Vellore Citizens Welfare Forum v. Union of India”¹⁸, The petition was made in response to the huge discharge of untreated effluent from tanneries and other businesses in the state of Tamil Nadu that contributes to pollution. It was claimed that the principal water supply source and the groundwater in the Indian state of Tamil Nadu had been affected by tanneries' untreated

¹⁵ Dr. V.K. Bansal, *“Right to Life and Personal Liberty in India, New Delhi”*, Deep & Deep, (1987) : 56.

¹⁶ Manoj Kumar, *“Judicial Control of Environmental Pollution in India”*, Chotanagpur Law Journal, 2009-10, Vol. 2, No. 2

¹⁷ AIR 1980 SC 1622.

¹⁸ AIR 1996 SC 2715.

effluent discharges. It was alleged that vast expanses of agricultural land have been turned into wastelands, the groundwater in the vicinity of these tanneries has become so poisoned that it is unsafe for human consumption, and the productivity of a sizable amount of land has drastically dropped. The court considered the precautionary principle and came to the conclusion that the right to be free from environmental toxins is a part of the right to life guaranteed by Article 21. After coming to this decision, the court ruled that any industries that disobey Pollution Control Board and NEERI regulations must shut down.

“In M.C. Mehta v. Union of India”, also known as Taj Trapezium case, To stop the Taj Mahal from getting worse because of pollution from coal-using industries, a petition was filed through the Trapezium.

In response, the Supreme Court told 292 industries in Agra to switch to natural gas as an industrial fuel by a certain date or stop using coal/coke and apply for relocation, or they would have to stop operating.

“In M.C. Mehta v. Kamal Nath”, In this case it was contended by the petitioner that it is against Article 21 of the Indian Constitution for someone to interfere with the ecological balance and “the natural conditions of rivers, woodlands, air, and water, which are gifts from nature”. The Apex Court agreed with the petitioner's contention and determined that any alteration to the vital environmental components of air, water, and soil would be considered a threat to "life" under “Article 21 of the constitution”.

The court emphasised that the Public Trust Doctrine and the polluter-pays principle are applicable in these situations after ruling that Article 21 was violated.¹⁹

In M.C. Mehta v. Union of India, In order to shield the populace from the harms of air pollution, the Apex Court declined to allow a broad extension of the deadline for CNG vehicle conversion. The Supreme Court in its order recommended that cars be converted to CNG within a reasonable amount of time.

In N.D. Jayal v. Union of India²⁰, again in various cases the apex court highlights the importance of clean and healthy environment component of the Article 21-guaranteed right to life and personal liberty.

Therefore, the courts have determined that the right to live in a clean environment is an essential right implied in “the right to life and personal liberty guaranteed by Article 21”. The judiciary

¹⁹ M.V Ranga Rao, “ROLE OF JUDICIARY IN ENVIRONMENTAL PROTECTION”, Supreme Court Journal, September- December, (2001) Vol.3.

²⁰ M.C. Mehta v. Union of India AIR 1998 SC 2963.

has occasionally also enacted regulations to prevent and restore ecological balance, including orders to shut down specific industrial operations.

IX. CONCLUSION

From the research presented above, it is safe to say that the Indian Constitution is a living constitution, and the Indian judiciary has recognized a number of unrecognized rights as fundamental rights by employing interpretive techniques. Other than establishing the clean environment as a fundamental right, the judiciary has also created environmental law that supports a number of significant ideas, including the Polluter Pays Principle, the Precautionary Principle, the Public Trust Doctrine, and others. However, despite the judiciary's active engagement, environmental degradation is increasing. Furthermore, no right can be adequately safeguarded and secured unless everyone in society is aware of their moral, ethical, social, and constitutional obligations and takes action to uphold them.
