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Protection of Environment and Constitution of India

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ABSTRACT

We have observed serious manmade disasters to the environment in India where many lost their lives one such disaster is the Bhopal Gas Tragedy in the year 1984. Since then, the requirement for protection of the environment has become an important issue to concentrate on. The Constitution of India has provided numerous provisions regarding protection of environment to have a clean and pollution free where it is the state and the individuals to conserve the natural environment of the nation but why do we have a high percentage of environmental degradation. India has to tackle a number of problems such as population, scarcity of proper food and water, health facilities and poverty. India has one of the greatest populations of slums and if you observe the slum areas you will see a very bad environmental atmosphere. We will be dealing with different cases in this paper such as M.C. Mehta v Union of India and various other environmental cases like the Ganga River pollution case. The aim of this article is to observe the Constitutional Provisions on environmental protection, to compare the provisions on Environmental Protection Act, 1986, To find a method in bringing in an effective mode of environmental preservation, To study the case laws regarding Environmental Law, To observe whether the constitutional remedy is effective enough or not.

Keywords: *Constitutional obligations, environment, Article, pollution, disaster, atmosphere.*

I. INTRODUCTION

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 mingled with human rights approach and it is now well understood and necessary that, it is the basic human right of every individual to live in clean and pollution free environment with human dignity. In view of the various constitutional provisions and other statutory provisions contained in various laws relating to environment protection, the Supreme Court has held that the essential feature of “sustainable development” such as the “precautionary principle” and the “polluter pays

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principle” are part of the environmental law of the country.

When the constitution of India was drafted it did not contain any specific provisions on environment and even the word “Environment” was not there in the constitution; there are certain provisions which to a great extent had direct dependence on the environment such as improvement of public health, organization of agricultural and animal husbandry on modern and scientific lines and protection of natural monuments from spoliation, etc.

II. HISTORY OF ENVIRONMENTAL LAW IN INDIA

The history of environmental law in India can be divided into four periods which we will be discussing in this article. The Ancient, Medieval, British and Post-Independence of India will be observed on how the people protected the environment and what practices were prevalent.

DURING THE ANCIENT INDIAN PERIOD:

In the Hindu dogma forests, wildlife, trees were held to be in high standard and given high respect. A description of trees, plants and wildlife and their importance to people was given in Vedas, Upanishads and Puranas.

In “Rig Veda” it is mentioned in some of its principles about the climate, the increasing level of fertility and the improvement of human life dwelling in the connection with the nature. In “Atharva Veda” trees are considered as groves of many gods and goddesses. The “Yajur Veda” taught us that humans should not exploit or dominate the nature and animals but they should learn how to live with harmony by respect and kindness towards them. The Hindu society was aware of the consequences of deforestation and hunting of animals would lead to effect in the environment. The “Yajnavalkya Smriti” banned cutting of trees and imposed a penalty. Many instructions for the use and maintenance of water were given in “Charak Samhita”. There also existed a relationship of mutual respect and kindness between animals and humans. Ancient Hindu Scriptures prohibited the killing of birds and animals. In “Yajur Veda” it stated that no person should kill animals.

DURING THE MEDIEVAL INDIAN PERIOD:

In the medieval period the rule of the Mughals played a significant role in the conservation and protection of the environment. During the rule of the Mughals many gardens, fruit orchards and green parks were placed around the palaces, central and provincial headquarters, public places and on river banks and valleys. They used these places to spend their holidays during summers. Besides the administrative officers of the empire the “

Mohtasib" were empowered with the duty of prevention of pollution. The Mughal Empire was observed as great nature lovers although they did not do much to conserve the forest. To the Mughal emperors the forests were just the place where they could hunt, for their governor"s they were properties which generated revenue and finance freindly. A few species of trees enjoyed preveledge and were called as " royaltrees" and had a restriction on being cut. However, there was no restriction in cutting of rest of the trees.

The forest was treated only as a source of income or useful resources for the empire. The freedom to use the forest"s natural resources did not mean that they could be used or misused by one and all without any restraints. Rather the resources were quite effectively managed with the help of complex range of rules and regulations woven around the socio cultural and economic activities of the local communities.

DURING THE BRITISH RAJ IN INDIA:

The start of the British Rule in India has already started with the exploitation of the natural resources. There was no thought on the conservation of forest. The British used the Indian forest resources to the extreme level. The reason was for the demanding increase of military, British Navy, local construction and for export trade, etc.

In the year 1806 the British tried to control and exploit the forest by appointing a commission to look into whether the teak wood were available in the Malabar and Travancore for conserving them but failed as wealth for the British was considered more important. In 1864 they appointed the first Inspector General of Forest. The duty of the forest department under the Inspector general was for exploring resources, demarcating reserves and protecting the forest.

The British Government enacted the Forest Act, 1865 to have a sole right over the forest. The act enabled the forest administration by reserving forest close to people and imposes penalties for those who did not follow the provisions of the Act. On 19th October 1884, the British Government declared its first Forest Policy with the following objectives

1. To promote the well being of the people in the country;
2. To preserve climatic and physical conditions in the country; and
3. To fulfil the needs of the people.

This policy also gave suggestions on classification of forest into various categories such as

1. The forests which were essential for preservation on climatic and physical grounds;
2. The forests which were of costly timber mainly for commercial purposes;

3. The minor forests which consisted inferior variety of timber; and
4. The forests which had no resourceful materials and were forests for namesake.

DURING THE POST-INDEPENDENCE PERIOD OF INDIA:

The post-independence period witnessed a great deal of changes within the policies and attitudes of the Governments in regard to environmental protection. The Constitution of India came into force on twenty sixth Jan 1950, had few provisions relating to environmental management.

Article 39(b) provides that “it is the duty of the state to secure the possession and management of the fabric resources of the community are therefore distributed as best to subserve the common good”.

Article 47 provides that “the State shall regard the rising of the extent of nutrition and also the commonplace of living of its individuals and also the improvement of public health as among its primary duties.”

Article 48 directs that “the State shall endeavour to prepare agriculture and husbandry on fashionable and scientific lines and take steps for protective and up the breeds and prohibiting the slaughter of cows and calves and alternative sustenance and draught cows.”

Article 49 directs that “it shall be the duty of the State to safeguard each monument or places or object of inventive or historic interest, declared to be of national importance, from spoliation, disfigurement, destruction, removal, and disposal or export because the case could be”.

From the above-mentioned articles, one will perceive that the COI wasn't environmentally negligent, though the word environment wasn't expressly used in the Constitution; the thing of the higher than articles is to conserve the natural resources and to safeguard the natural setting.

Van Mahotsav, National competition of planting trees was adopted in 1950, with associate degree object to make mass awareness concerning the worth of forests in human well-being. National Forest Policy was developed for the aim of correct management of forests of the country and to maximise the advantages of forests shaped within the year 1952.

The Pitambar Pant Committee on Human setting was got wind of to organize a report on the state of setting for illustration at the UN Conference on Human setting command at capital of Sweden in 1972.

III. CONSTITUTIONAL PROVISIONS IN PROTECTION OF ENVIRONMENT

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 mingled 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 and clean environment with full human dignity. In view of the various constitutional provisions and other statutory provisions contained in various laws relating to environment protection, the Supreme Court has held that the essential feature of “sustainable development” such as the “precautionary principle” and the “polluter pays principle” are part of the environmental law of the country.

When our constitution was drafted it did not contain any specific provisions on environment and even the word “Environment” did not find a place in the constitution; there are certain provisions which to great extent had direct bearing on the environment such as improvement of public health, organization of agricultural and animal husbandry on modern and scientific lines and protection of natural monuments from spoliation, disfigurement etc.

PREAMBLE OF THE CONSTITUTION AND ENVIRONMENTAL LAW:

The preamble of our Constitution provides that our country is based on “Socialistic” pattern of society, where the State is more concerned about the social problems than the individual problems. Environmental pollution which has emerged as one of the biggest social problems is being regarded as a real problem in the society at large and so the state is under an obligation to fulfil the basic aim of socialism, that is, to provide basic and decent standard of living to all which can be achieved from a pollution free and clean environment.

The preamble further declares that, the rights and freedoms which the people of India intend to secure all citizens include justice, social, economic and political. Justice also includes environmental justice. Although the particular word “environment” is not mentioned here, we can ourselves interpret this to include environmental justice. Environment as a subject matter has entered in our day-to-day life in such a way that we cannot ignore it.

ARTICLE 48A AND 51A (1)(G):

The Indian Government enacted the 42nd Amendment of the Constitution bringing in an amendment in these articles to protect the environment. The amendment brought in the Article 48A and Article 51A (1) (g) in the Constitution of India concentrating on protection of the environment.

Article 48A was associated in addition to the 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”. The Article further explains that it is the duty of the state to protect the natural environment and improve the environment by various methods of preservation and protection in order to reduce the pollution already caused. It also mentions that it is the duty of the state to safeguard the forest and the wildlife surrounding the country.

ARTICLE 51A (1) (G)

is a responsibility given to the citizens of India in an addition to the Fundamental Duties. It states, “To protect and improve the natural environment including forest, lakes, rivers and wildlife, and to have compassion for living creatures”. The Article is similar to Article 48A but the only difference is the duty given is to the citizens of India as a Fundamental Duty that once each national owes a constitutional duty to safeguard the surroundings (Art.51A), the nation should be conjointly entitled to enlist the court’s aid in imposing that duty against the State agencies. The Court gave the administration six month to wash up the complete town, and laid-off the plea of lack of funds and employees.

ARTICLE 246:

Article 246 of the Constitution divides the subject areas of legislation between the Union and the States. The Union List (List I) includes defence, foreign affairs, atomic energy, interstate transportation, shipping, air trafficking, oilfields, mines and inter-state rivers. The State List (List II) includes public health and sanitation, agriculture, water provides, irrigation and emptying, fisheries. The Concurrent list (List III) (under that each State and also the Union will legislate) includes forests, protection of wildlife, mines and minerals and development not coated within the Union List, population control and factories. From an environmental stand, the allocation of legislative authority is a crucial one – some environmental drawback like sanitation and waste disposal, square measure best tackled at the native level; others, like pollution and wildlife protection, square measure higher regulated uniform national laws.

ARTICLE 253:

Art.253 of the Constitution empowers Parliament to create laws implementing India’s international obligations furthermore as any call created at a global conference, association or alternative body. Art.253 states: nevertheless something within the preceding provision provisions of this chapter, Parliament has power to create any law for the complete or any

a part of the territory of India for enacting any treaty, agreement or convention with the other country or countries. The Tiwari Committee in 1980 put forward an idea for a brand new entry on “environmental Protection” to be introduced within the concurrent list to be modified by the centre to enact on environmental subjects, as there was no direct entry in the 7th schedule enables Parliament to enact comprehensive environment laws.

ARTICLE 14 AND ARTICLE 19(1)(G):

Article 14 states: “It is the duty of the State to treat all person equal or equal protection before the law within the territory of India”. The right to equality may also be violated by government decisions having an impact on the environment. In order to prove the denial of the right to equality many environmental groups often seek to Article 14 to quash arbitrary municipal permission for construction that are violating the development regulations.

ARTICLE 21:

“Every person shall be given the right to life and personal liberty unless restricted by the law or conflicting the law.”

In *Maneka Gandhi v Union of India*, the Supreme Court while elucidating on the importance of the “right to life” under Art. 21 held that the right to life is not confined to mere animal existence, but extends to the right to live with the basic human dignity.

Similarly while interpreting Art.21 in *Ganga Pollution Case*, Justice Singh justified the closure of polluting tanneries 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.

IV. IMPACT OF THE CONSTITUTIONAL PROVISIONS

The Constitution of India has introduced the Article 48A and 51A (1) (g) after the 42nd Amendment of the Constitution highlighting on environment protection in India. Even after so many amendments and implementations we can still observe that the state as well as the people bothers less on preservation of the environment. There is no compulsory implementation of the rules in regarding the preservation of environment. We are still a developing country and poverty prevails in many parts of the country. People are not educated enough regarding protecting and preservation of environment. If the law implements strict punishment on those who pollute the environment there may be better reason to follow and preserve the environment. We will further discuss on the impact of the constitutional provisions on preservation of the environment by various case studies

and methods or policies followed.

THE BHOPAL GAS TRAGEDY CASE:

The Bhopal tragedy has invited 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.

On Dec three, 1984, highly unhealthy alkyl radical isocyanides (MIC), that had been factory-made and hold on in Union Carbide's manufacturer in Bhopal, free into the atmosphere and killed over three,500 folks and seriously livid concerning a pair of 100000 folks.

The Bhopal gas tragedy (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.

THE TAJ MAHAL CASE:

In Taj Mahal case (M C Mehta V. Union of india, AIR 1997, SC 734), the Supreme Court issued directions that coal and coke based mostly industries in Taj Trapezium (TTZ) that were damaging Taj ought to either modification over to gas or to be resettled outside TTZ. once more the Supreme Court directed to safeguard the plants planted around Taj by the Forest Department as under:

It is the duty of the Divisional Forest Officer to see whether water is being provided to plants. The duty of the Union Government is to provide funds. Funding is also afterwards settled with the U.P. Government, however in any set of circumstances for need of funds the officer is directed to visualize that plants that don't water away.

The Court control that 292 industries set and operational in city should shift inside fastened time schedule to gas as industrial fuel or stop functioning with coke /coal and find resettled. The industries not applying for gas or resettled ar to prevent functioning with coke/coal from 30-04-97. provisions of city program and conjointly the inducement usually extended to the new industrial units.

The integration of the international principles of environmental law into the Indian legal framework is a very important consequence of the emergence of Public Interest judicial proceeding within the realm of environmental law. In fact, the application and re-

interpretation of international legal principles in the Indian context reflect a greater concern with making hazardous industrial enterprises responsible towards environmental concerns. In *M C Mehta v Union of India* the Supreme Court extends the principle of strict liability drawing from the *Rylands v Fletcher* case in English law to formulate a principle of absolute liability whereby an enterprise carrying out a hazardous activity is “absolutely liable” to compensate for any harm arising from such activity. The principle of strict liability in English common law states that “a person will be strict liable when he brings or accumulates on his land something likely to cause harm if it escapes, and damage arises as a natural consequence of its escape.” However, in formulating a principle of absolute liability, the Court contends that such liability is not subject to any of the exceptions under the rule in “*Rylands v Fletcher*”

M. C. MEHTA V UNION OF INDIA (VEHICULAR POLLUTION CASE):

A matter concerning to the transport pollution in Old Delhi town, within the context of Art forty seven and forty eight of the Constitution came up for thought in *M.C. Mehta vs. Union of Asian nation (Vehicular Pollution Case)*. It had been command to be the duty of the govt. to ascertain that the air didn't become contaminated thanks to transport pollution. The Apex court once more confirms that healthy environment is a basic right. expressed that the proper to wash air additionally stemmed from Art twenty-one that cited right to life. This case has served to be a significant landmark attributable to that leadless hydrocarbon offer was introduced in Old Delhi. There was a whole phasing out previous industrial vehicles quite five years previous as directed by the courts. Old Delhi owes its giftatmospheric condition to the try created to keep up clean air.

V. 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 well- being.

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 degreed 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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