

Environmental Protection & Constitutional Obligation

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The Constitution of India, which is the supreme law of the land, has imposed an obligation to protect the natural environment both on the State as well as the Citizens of India. Part IV of the Constitution called the Directive Principles of State Policy has imposed certain fundamental duties on the State to protect the environment. Part IV A of the Constitution has imposed a fundamental duty on every citizen of India "to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures". obligations on the state Article 39 (b) of the Constitution of India provides that the State shall direct its policy to see "that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good." The term embraces all things, which are capable of producing wealth for the community. material resources of the community, he expressions material resources of vate community' has been held to include such resources in the hands of the private persons and not only those, which have already vested in the State. The Constitution of India through Article 42 has directed the State to endeavor to secure just and human conditions of work. Under Article 47 it imposes a duty upon the State to raise the level of nutrition and the standard of living of its people and improve public health. The Supreme Court in Municipal Council, Ratlam v. Vardhichand observed, "the State will realize that Article 47 makes it a paramount principle of governance that steps are taken for the improvement of public health as amongst its primary duties.'

1. Introduction

The environment protection and the constitution of India both have evolved over the years. As the need of the protection of environment and the realization of such concept has developed through several years, similarly the constitutional frameworks related to the protection of the environment also emerged through amendments and other related documents. The focus to provide the constitutional mandate for the protection of environment was to ensure its

preservation as it was a serious issue, although there were some discussions regarding the protection of environment since the ancient time but the full-fledged actions for the purpose came into force from the Stockholm Conference held in the year 1972. Based upon the Stockholm conference, the Indian parliament passed the forty second amendment to the constitution in the year 1976 and incorporated specially two Articles relating to protection and improvement of environment where in the Constitution of India obligates the “State” as well as “Citizens” to “Protect and Improve” the environment. The 42nd amendment brought in 1976 changed the aspect and now in a way more expressive manner it talked about the environment protection as it was a very serious problem which was to be tackled the 42nd amendment completely changed the scenario as the major decision regarding the protection of the environment started taking place. This brought sudden and important changes in the constitution of India and directed its attention towards the protection of the environment. The Constitution of India, which is the supreme law of the land, has imposed an obligation to protect the natural environment both on the State as well as the Citizens of India. Part IV of the Constitution called the Directive Principles of State Policy has imposed certain fundamental duties on the State to protect the environment. Part IV A of the Constitution has imposed a fundamental duty on every citizen of India "to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living the environment protection and the constitution of India both have evolved over the years. As the need of the protection of environment and the realization of such concept has developed through several years, similarly the constitutional frameworks related to the protection of the environment also emerged through amendments and other related documents. The focus to provide the constitutional mandate for the protection of environment was to ensure its preservation as it was a serious issue, although there were some discussions regarding the protection of environment since the ancient time but the full-fledged actions for the purpose came into force from the Stockholm Conference held in the year 1972.

Based upon the Stockholm conference, the Indian parliament passed the forty second amendment to the constitution in the year 1976 and incorporated specially two Articles relating to protection and improvement of environment where in the Constitution of India obligates the “State” as well as “Citizens” to “Protect and Improve” the environment. he history of the evolution of Environmental Laws in India can be traced back to ancient times.

2. OBJECTIVES: -

1. To find out the role of the constitutional obligations in protecting the environment.
2. To find out the role of the citizens in protecting the environment
3. To find out the important judicial decisions related to environmental protection

3. METHODOLOGY: -

BASED ON SECONDARY DATA

RESULT OF FINDINGS: -

1. Judiciary is playing an important role.
2. The pollution control Board must be given the power to punish the violators
3. Laws must be strengthened, to protect environment. (Eco system)
4. The role of the public and the NGOs

THE CONSTITUTIONAL OBLIGATION

Article 39 (b) of the Constitution of India provides that the State shall direct its policy to see "that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good." The term embraces all things, which are capable of producing wealth for the community material resources of the community, he expressions material resources of vate community' has been held to include such resources in the hands of the private persons and not only those, which have already vested in the State.

The Constitution of India through Article 42 has directed the State to endeavor to secure just and human conditions of work under Article 47, it imposes a duty upon the State to raise the level of nutrition and the standard of living of its people and improve public health. The Supreme Court in *Municipal Council, Ratlam*

V. Vardhichand observed," the State will realize that Article 47 makes it a paramount principle of governance that steps are taken for the improvement of public health as amongst its primary duties. 'Article 48 directs the State to take to organize agriculture and animal husbandry on modern and scientific lines. It is directed to take steps for preserving and improving the breeds and prohibiting the slaughter of cows, calves and other milch and draught cattle of all articles, Article 48A which was added to the Constitution by the Constitution of India 42nd Amendment Act in the year 1976, expressly directs the State to "to protect and improve the environment and to safeguard forests and wild-The Madras High Court in *M.K. Janardhan am vs. District Collector, Tiruvallur* observed that "the phrase used (in Articles 48A and 51A) is 'protect

ARTICLES 48-A AND 51-A. CLAUSE (G):

Initially, the Constitution of India had no direct provision for environmental protection. Global consciousness for the protection of environment in the seventies, Stockholm Conference and increasing awareness of the environmental crisis prompted the Indian Government to enact 42nd Amendment to the Constitution in 1976. The Constitution was amended to introduce direct provisions for protection of environment. This 42nd Amendment added Article 48-A to the Directive Principles of State Policy.

Article 49-A: The Article states: "The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country. "The said amendment imposed a responsibility on every citizen in the form of Fundamental Duty. Article 51-A, Clause (g): Article 51-A (g) which deals with Fundamental Duties of the citizens states: "It shall be the 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." Thus, protection and improvement of natural environment is the duty of the State (Article 48-A) and every citizen (Article 51- A (g)).

Article 253: Article 253 states that 'Parliament has power to make any law for the whole or any part of the country for implementing any treaty, agreement or convention with any other country. In simple words this Article suggests that in the wake of Stockholm Conference of 1972, Parliament has the power to legislate on all matters linked to the preservation of natural The Parliament use of Article 253 to enact Air Act and Environment Act confirms this view. These acts were enacted to implement the decisions reached at Stockholm Conference. And improve' which implies that the phrase appears to contemplate affirmative governmental action to improve the quality of the environment and not just to preserve the environment in its degraded form.

State is also required under Article 49 "to protect every monument or place or object of artistic or historic interest (declared by or under law made by Parliament), to be of national importance from spoliation, disfigurement, destruction, removal, disposal or export Article 51 provides that the State should strive to "foster respect for international law and treaty obligations".

Most important of all articles is Article 37 which declares that the directive principles contained in Part IV of the Constitution are "fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. In all the above articles, the expression 'State' is used, and one should understand the meaning of the word 'State'. The framers of the Constitution of India chose to adopt the same definition for the word 'State' as defined in Article 12 for the purpose of Part IV of the Constitution as well'. This was done to enable the judiciary to interpret it so widely to bring all agencies and instrumentality of the State under the scope of the word 'State'. The object was to direct all such agencies and instrumentality of the State to apply the directive principles in making laws.

The Supreme Court in *M.C. Mehta v. Union of India* held that "these directive principles (Articles 39 (b), 47 and 48) individually and collectively impose a duty on the State to create conditions to improve the general health level in the country, and to protect and improve the natural environment. "The Word State as defined in Article 12 and as interpreted by the Supreme Court thing various cases decided by it means and includes:

FUNDAMENTAL DUTIES, ARTICLE 51(A) 42ND AMENDMENT ,1976,

Fundamental duties It shall be the duty of every citizen of India

- (a) to abide by the Constitution and respect its ideals and institutions, the national Flag and the National Anthem;
- (b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
- (c) to uphold and protect the sovereignty, unity and integrity of India;
- (d) to defend the country and render national service when called upon to do so;
- (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- (f) to value and preserve the rich heritage of our composite culture;

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life,

and to have compassion for living creatures;

(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;

(i) to safeguard public property and to abjure violence;

(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement.

THE IMPORTANT ENVIRONMENTAL LAWS IN INDIA: -

The following are the important environmental laws pre independence and post-independence.

1. 1927 - The Indian Forest Act and Amendment, 1984, is one of the many surviving colonial statutes. It was enacted to 'consolidate the law related to forest, the transit of forest produce, and the duty leviable on timber and other forest produce'.

2. 1948 – The Factories Act and Amendment in 1987 was the first to express concern for the working environment of the workers. The amendment of 1987 has sharpened its environmental focus and expanded its application to hazardous processes

3. 1974, Act (The water prevention and control of pollution). The Act prohibits discharge of pollutants into water bodies beyond a given standard and lays down penalties for non-compliance with its provisions.

4. 1986 - The Environment Protection Act authorizes the central government to protect and improve environmental quality, control and reduce pollution from all sources, and prohibit or restrict the setting and/or operation of any industrial facility on environmental grounds.

5. 1989 - The objective of Hazardous Waste (Management and Handling) Rules is to control the generation, collection, treatment, import, storage, and handling of hazardous waste.

6. 1991 - The Public Liability Insurance Act and Rules and Amendment, 1992 was drawn up to provide for public liability insurance for the purpose of providing immediate relief to the persons affected by accident while handling any hazardous substance.

7. 2000 - The Municipal Solid Wastes (Management and Handling) Rules, apply to every municipal authority responsible for the collection, segregation, storage, transportation, processing, and disposal of municipal solid wastes.

8. 2002 - The Noise Pollution (Regulation and Control) (Amendment) Rules lay down such terms and conditions as are necessary to reduce noise pollution, permit use of loud speakers or public address systems during night hours (between 10:00 p.m. to 12:00 midnight) on or during any cultural or religious festive occasion.

SOME OF THE IMPORTANT CASE LAWS'

1. State of Gujarat vs Mirzapur Moti Kureshi Kassab on 26 October, 2005 the contexts in which article 51(a) appears in the document by enacting clause (g) in Article 51-A and giving it the

status of a fundamental duty, one of the objects sought to be achieved by the Parliament is to ensure that the spirit and message of Articles 48 and 48A is honored as a fundamental duty of every citizen. The Parliament availed the opportunity provided by the Constitution (Forty-second Amendment) Act, 1976 to improve the manifestation of objects contained in Article 48 and 48-A. While Article 48-A speaks of "environment", Article 51-A(g) employs the expression "the natural environment" and includes therein "forests, lakes, rivers and wild life". While Article 48 provides for "cows and calves and other milch and draught cattle", Article 51-A(g) enjoins it as a fundamental duty of every citizen "to have compassion for living creatures", which in its wider fold embraces the category of cattle spoken of specifically in Article 48.

2. In *Mohan Kumar Singhania & Ors. v. Union of India & Ors.*, 1992 Supp (1) SCC 594, a governmental decision to give utmost importance to the training programme of the Indian Administrative Service selectees was upheld by deriving support from Article 51-A(j) of the Constitution, holding that the governmental decision was in consonance with one of the fundamental duties.

1. the executive and the legislature of the Union,
2. the executive and the legislature of the State,
3. the judiciary

4. own authorities like Municipalities, District Boards, Panchayats, Townships, Corporations, Improvement Trusts, etc., and other authorities which are agencies or instrumentality of the State 'By a generous interpretation of the word 'State', the Supreme Court has now included many institutions including societies registered under the Companies Act, 1860°, the Companies 1860°, a Company incorporated under Sec.617 of Act, and every 'other authority as a State of the State. the wide interpretation given to the express it is an instrument Supreme Court is Principles of Scope and amplitude of the Fundamental Rights State and the Directive Policy. Hence, now it has become the fundamental duty of all in authorities coming under the purview of Article 12 to fulfil obligations contained IV of the Constitution India the Legislature, both the Union and the State, to fulfil their fundamental obligations contained in the constitution, have enacted a of to protect and improve the natural environment and to safeguard of legislation to life. The Executive, both the Union and the State, to fulfil their constitutional obligations, have made enough rules to effectively implement the laws made by the legislatures to protect and improve the natural environment laws safeguard forests and wildlife. The Judiciary, to fulfil its Constitutional Obligations was and is always pre- pared to issue 'appropriate orders, directions and writs against those persons who pause environmental pollution and ecological imbalance. This is evident from a plethora of cases decided by it starting from the *Ratlam Municipality Case Vardhichand*' provoked the consciousness of the Judiciary to a problem, which had not attracted that much attention. The Supreme Court responded with equal anxiety and raised the issue to come within the mandate of the Constitution. In this case, the question related to the court's power to force public bodies under public duties to implement specific plan in response to public grievances, which related to environmental pollution. The Supreme Court in *Ratlam Municipality case* observed: "Why drive common people to public interest action? Where Directive Principles have found statutory expression in Do's and Don'ts the court will not sit idly by and allow municipal

government to become a statutory mockery. The law will relentlessly be enforced, and the plea of poor finance will be poor alibi when people in misery cry for justice. The dynamics of the judicial process has a new enforcement dimension not merely through some of the provisions of the Criminal Procedure Code but also through activated tort consciousness. The officers in charge and even the elected representatives will have to face the penalty of the law if when the Constitution and follow-up legislation direct them to do are defied or denied wrongfully" Likewise, the Supreme Court in *M.C. Mehta v. Union of India** directed an industry manufacturing hazardous and lethal chemicals and gases posing danger to health and life of workmen and people living in its neighborhood, to In yet another case filed by Mr. M.C. Metha it ordered the closure of all tanneries, which were found to be polluting the river Ganga'.

3. The Supreme Court on another occasion' directed the Mahapalika to get the dairies shifted to a place outside the city and arrange for removal of wastes accumulated at the dairies so that it may not reach the river Ganga. In the same case, it also directed the Mahapalika—

1. to lay sewerage line wherever it was not constructed,
2. to construct public latrines and urinals for the use of poor people free of charge,
3. to ensure that dead bodies or half burnt bodies are not thrown into the River Ganga
4. to take action against the industries responsible for pollution.

4. In the Delhi industries pollution case, the Supreme Court ordered for the shifting of 168 hazardous industries operating in Delhi as they were causing danger to the ecology. In *S. Jagannath v. Union of India*" the Supreme Court has held that setting up of shrimp culture farms within the prohibited areas and in ecologically fragile coastal areas have adverse effect on the environment, coastal ecology and economics and hence, they cannot be permitted to operate.

5. The Supreme Court in *A:P. Pollution Control Board II v. M. V. Nayudu*" referred to the Resolution of the UNO20 passed during the United Nations Water Conference in 1977 to which India is a party and observed that "the right to access to drinking water is fundamental to life and there is a duty on the State under Article 21 to provide clean drinking water to its citizens. "All people, whatever their stage of development and their social and economic condition, have the right to have access to drinking water in quantum and of a quality equal to their basic needs. "What is stated above is only a very small portion of the contributions made by the Judiciary to protect and improve the environment and to safeguard forests and wildlife. It set up the Central Pollution Control Board (CPCB) which lays down standard for the prevention and control of water pollution. At the state level, the State Pollution Control Board (SPCB) functions under the direction of CPCB. The functions of CPCB have been laid down in section 16 whereas the functions of SPCB have been laid down in section 17. The sampling of effluents for test has been laid down in section 21.

6. In *Delhi Bottling Co. Pvt. Ltd. V. CPCB*, AIR 1986 Del 152, it was found that the representatives of board got the samples analyzed from a non-recognized laboratory by the state. The court held that since section 21 was not complied upon, the test results were inadmissible as evidence. The Air (Prevention and Control of Pollution Act, 1981) To implement the decision taken in the Stockholm Conference, the Parliament enacted the Air Act under Article 253. It controls mainly air pollution and its abatement. Also establishes air

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quality standards. The Central State Boards set up under section 16 and 17 independently notify emission standards. Every industrial operator within a declared air pollution area, must obtain a permit from the State Board (Sec-21(1) and (2))

7. The Rajasthan High Court in *Vijay Singh Puniya v. State of Rajasthan* observed that "any person who disturbs the ecological balance or degrades, pollutes and tinkers with the gifts of the nature such as air, water, river, sea and other elements of the nature, he not only violates the fundamental right guaranteed under Article 21 of the Constitution but also breaches the fundamental duty to protect the environment under Article 51(g). This observation was made in a writ petition filed against dyeing and printing units, which were discharging effluents and polluting the water sources used for agricultural and drinking purposes. The question before us is whether we as citizens of India have fulfilled our part of obligation imposed by the constitution of India? The answer is "No". In Plato's phrase, "We are still like cave men, with our backs turned to the light, watching the shadows on the wall".

8. In *Taj Mahal's case (M C Mehta V. Union of India, AIR 1997, SC 734)*, the Supreme Court issued directions that coal and coke-based industries in Taj Trapezium (TTZ) which were damaging Taj should either change over to natural gas or to be relocated outside TTZ. Again, the Supreme Court directed to protect the plants planted around Taj by the Forest Department as under: The Divisional Forest Officer, Agra is directed to take immediate steps for seeing that water is supplied to the plants. The Union Government is directed to release the funds immediately without waiting for receipt of the proposal from the U.P. Government on the basis of the copy of the report. Funding may be subsequently settled with the U.P. Government, but in any set of circumstances for want of funds the officer is directed to see that plants do not wither away. The Court held that 292 industries located and operating in Agra must changeover within fixed time schedule to natural gas as industrial fuel or stop functioning with coke /coal and get relocated. The industries not applying for gas or relocated are to stop functioning with coke/coal from 30-04-97. The Shifting industries shall be given incentives in terms of the provisions of Agra Master Plan and also the incentive normally extended to the new industrial units. The integration of the international principles of environmental law into the Indian legal frame work is an important consequence of the emergence of Public Interest Litigation in the realm of environmental law. (Razzaque, 2004) In fact, the application and re-interpretation of international legal principles in 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 Fletchers* 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." (Razzaque, 2004: 210) 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*."

9. The Bhopal Gas Leak Case the Bhopal disaster raised complex legal questions about the liability of parent companies for the acts of their subsidiaries, the responsibilities of multinational corporations engaged in hazardous activities, the transfer of hazardous

technologies and the applicable principles of liability. Bhopal was inspirational factor for the judicial innovation in the area of evolving principles of corporate liability for use of hazardous technology. On December 3, 1984, highly toxic methyl isocyanides (MIC), which had been manufactured and stored in Union Carbide's chemical plant in Bhopal, escaped into the atmosphere and killed over 3,500 people and seriously injured about 2 lakh people. The Bhopal gas leak disaster (Processing of Claims) Act, 1985 was passed by parliament to ensure that the claims arising out of the Bhopal disaster were dealt with speedily, effectively, equitably and to the best advantage of the claimants. High Court Judgment: Justice Seth used English Rules of procedure to create an entitlement to interim compensation (it is permissible for courts to grant relief of interim payment under the substantive law of torts). Under the English rules, interim relief granted in personal injury cases if a prima facie case is made out. He said that "more than prima facie case have been made out" against the Carbide. He observed that the principle of absolute liability without exceptions laid down in *M.C. Mehta* more vigorously to the Bhopal suit. He holds that Carbide is financially a viable corporation with \$6.5 billion unencumbered asset and \$200 millions encumbered assets plus an insurance which could cover up to \$250 millions worth of damages. Given carbide's resources, it is eminently just that it meets a part of its liability by interim compensation (Rs.250 cr.) In *Union Carbide Corporation v Union of India* (AIR 1990 SC 273), the Supreme Court secured a compromise between the UCC and Government of India. Under the settlement, UCC agreed to pay US \$470 million in full and final settlement of all past, present and future claims arising from the Bhopal disaster.

In addition to facilitate the settlement, the Supreme Court exercised its extraordinary jurisdiction and terminated all the civil, criminal and contempt of court proceedings that had arisen out of the Bhopal disaster. It was declared by the court that if the settlement fund is exhausted, the Union of India should make good the deficiency. Review petition under Art.137 and writ petitions under Art.32 of the Constitution of India were filed questioning the constitutional and under the Bhopal Act (providing for the registration and processing of claims) and the resultant categorization of the victims was also upheld.

It was laid down that there is no need to tie down the tortfeasor to future liability [*UCC v UOI* AIR 1992 SC 248]. Criminal Liability of Carbide Officials in *UCC v UOI* (AIR 1992 SC 248), the supreme court reinstate criminal charges for homicide not amounting to murder' (Sec. 304, Part II, IPC) against top executives at Union Carbide (viz. nine UCIL employees and three foreign accused, including Warren Anderson, the CEO) while upholding the rest of the settlement. The CBI in December 1993 finally prepared the documents necessary to extradite Warren Anderson.

THE OBLIGATIONS OF CITIZENS OF INDIA

The Constitution of India has made a double provision:

- (i) A directive to the State for protection and improvement of environment.
- (ii) Imposing on every citizen in the form of fundamental duty to help in the preservation of natural environment. This is the testimony of Government's awareness of a problem of worldwide concern. Since protection of environment is now a fundamental duty of every citizen, it is natural that every individual should do it as personal obligation, merely by regulating the mode of his natural life. The citizen has simply to develop a habitual love for

pollution. The constitution under part IV A, Article 51 A (g) has declared that it shall be the fundamental duty of a citizen of India " to protect and improve the natural! Environment including forests, lakes, rivers, and wildlife and to have compassion for living creatures". It was incorporated to the constitution the 42nd amendment act 1976, 11 types of fundamental duties were included, Article 51A(j) has imposed on citizens another fundamental duty "to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement".

4. CONCLUSION

The protection of the environment is the most important aspect for the survival of the human beings, the idea regarding the protection of the environment has emerged throughout the years it is not the result of any gradual change. The Stockholm conference which can also be said as the first official meeting regarding the environment protection has drawn the attention of the entire nation regarding the protection of the environment. Moving forward on the same aspect India brought the 42nd amendment and included various articles in its constitution for the protection of the environment. Before this amendment also there was a very limited scope for the protection of the environment but it came in its full-fledged manner after the conference which played a very vital role in the amendment which was related for the protection of the environment.

Moreover, the aspect kept on evolving as the judiciary which is also one of the main organs of the democratic nation, through various case laws kept on interpreting various articles in respect of the protection of the environment. The judiciary through various cases widened the scope of fundamental rights and brought them in relation to the environment and livelihood. Suddenly there was a gradual growth in the field of environment and now through these constitutional provisions the awareness regarding the environment protection has also evolved and it made citizens more conscious towards the protection of environment. For the same aspect the writ petition procedure has also been referred for bringing the problems related to the protection of environment and it has evolved in a very efficient manner such as PIL which is solving such a huge environment problem. Hence, looking at the same it can be concluded by stating that the constitutional provision has brought more responsiveness and consciousness among the citizens for the protection of environment, which is very essential part of the human beings.

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