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ENVIRONMENT PROVISIONS UNDER CONSTITUTIONS OF INDIA

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Introduction

The main cause of environmental degradation is the human activity in one way or the other. Law is a regulator of human conduct. Hence, the law plays an important role in the protection of environment from pollution by regulating the human activities. In India, the concern for environment protection has not only been raised to the status of fundamental law of the land. But it is also wedded 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 environment with full human dignity. The Constitution of India came into force on 26th January, 1950. Originally, the constitution contains no specific provisions for environmental protection. However, certain specific provisions have been incorporated by the Constitution (Forty Second Amendment) Act, 1976 and subsequent amendments. Indian Constitution is one of the very few constitutions in the world, which provides for specific provision for the protection and improvement of the Environment. The constitution, being the fundamental law of the land has a binding force on citizens, non-citizens as well as the State. The Fundamental Rights and the Directive Principles of the 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 provision relating to protection and improvement of the environment (the intended meaning of the environment in the constitution) may be explained with reference to the following head:

1. The Constitution Forty Second Amendment.
2. Federal System of Govt. (Distribution of Legislative Power).
3. Fundamental Rights.
4. Directive Principles of State Policy; and
5. Fundamental Duties

Constitution Forty Second Amendment

New provision Article 48-A in the Chapter, Directive Principles of State Policy. According to In 1976, under the leadership of the then Prime Minister, Smt. Indira Gandhi, the Constitution (Forty Second Amendment) Act was passed and the provisions relating to the protection of environment for the first time were incorporated by adding Article 48-A "the State shall Endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country". Further, a new provision Article 51-A in the form of "Fundamental Duties" was also incorporated by the 42nd Amendment. According to the sub-clause (g) of Art. 51-A, "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".

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Federal System of Government (Distribution of Legislative Power)

From environmental point of view, allocation of legislative authority is very important. The constitution of India deals exhaustively with legislative powers pertaining to environmental law. The legislative powers under the scheme of the constitution is divided into three lists viz., the Union List or List – I, the State List or List –II, the Concurrent List or List – III. Part – XI (Arts. 245-263) of the constitution provides for the distribution of legislative powers between the union and the states. There are about 200 Central and State Legislation on environmental protection. The most important environmental legislation was passed by the parliament under Art. 249 of the Constitution are The Water (Prevention and Control of Pollution) Act, 1974; The Air (Prevention and Control of Pollution) Act, 1974; The Air (Prevention and Control of Pollution) Act, 1981; and the Environment (Protection) Act, 1986.

Constitutional status of environment

The constitution of India is not an inert but a living document which evolves and grows with time. The specific provisions on environment protection in the constitution are also result of this evolving nature and growth potential of the fundamental law of the land. The preamble to our constitution ensures socialist pattern of the society and dignity of the individual. Decent standard of living and pollution free environment is inherent in this. The Environment (Protection) Act, 1986 defines environment as “environment includes water, air and land and the interrelationship which exists among and between air, water and land and human beings, other living creatures, plants, micro-organism and property”. The Supreme courts of India has demonstrated exemplary judicial activism and jumped out of passive shell in environment protection litigations. The Supreme Court has given effect to human right to decent environment by introducing new dimensions for the interpretation of constitutional provisions.

Fundamental Rights Part –III of the Constitution, containing Arts. 12 to 35, deals with fundamental rights. Articles 15(2)(b); Art. 21 and Art. 24 provide for specific provision for environmental protection.

Article 15(2)(b) “No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them be subjected to any disability, liability, restriction or condition with regard to: the use of wells, bathing Ghats, roads and places of public resort, maintained wholly or partly out for state funds or dedicated to the use of general public:. In simple words, Art. 15(2) prohibit discrimination on the ground of sex, race, religion, caste, place of birth etc. to make use of the public places the general public. The public places, which are part and parcel of the human environment, should be made available to the public. The

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preamble to our constitution ensures socialistic pattern of the society and decent standard of life, which can be pollution free environment.

Article 21 According to Article 21 of the constitution,

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

Art. 21 guarantee a fundamental right to life –a life of dignity to be lived in a proper environment, free of danger of disease and infection. The right to live in a healthy environment as part of Art. 21 of the Constitution was first recognized in the case of Rural Litigation and Entitlement Kendra vs. State of U.P. (Popularly known as Dehradun Quarrying Case). It is the first case of this kind in India, involving issues relating to environment and ecological balance. The R.L. & E. Kendra and others in a letter to the Supreme Court complained about the illegal / unauthorized mining in the Dehradun belt. As a result, the ecology of the surrounding area was adversely affected and it led to the environmental disorder. The Supreme Court treated the letter as writ petition under Art. 32 of the Constitution and directed to stop the excavation (illegal mining) under the Environment (Protection) Act, 1986. The respondents contended / argued that the writ petition was registered in 1983 and the Environment (Protection) Act was passed in 1986 and hence the criminal proceedings cannot be initiated with retrospective effect. The court rejected the contention of the respondents and held that the provisions of procedural law shall apply to ordinary criminal cases and not to the environmental cases. The court directed the Central and State Governments to take necessary steps to prevent illegal mining and to re-forestation in the area of mining.

In M.C. Mehta vs. Union of India, (Popularly known as “Oleum Gas Leak Case”) The Supreme Court treated the right to live in pollution free environment as a part of fundamental right to life under Art. 21 of the Constitution. Further the A.P. High Court in T. Damodar Rao vs. S.O., Municipal Corporation, Hyderabad, laid down that right to live in healthy environment was specially declared to be part of Art. 21 of the Constitution. In Murli S. Deora vs. Union of India, the Supreme court held that smoking is injurious to health, liberals be injuriously affected and that, in any case. The Supreme Court directed and prohibited smoking in public places and issued directions to the union of India, state governments as well as the Union Territories to take effective steps to ensure prohibiting smoking in public places.

Article 24: Article 24 of the Constitution speaks about exploitation of child labour. It says that “No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment” this provision is certainly in the interest of public health and part of the environment. In People's Union for Democratic Rights vs. Union of India, the Supreme Court held that the prohibition under Art. 24 could be enforced against any one, be it the State or private individual.

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Directive Principles of State Policy Part IV of the Constitution, Containing Articles 36 to 51, deals with Directive Principles of State Policy. The directive principles form the fundamental feature and are designed to achieve socio economic goals.

Art. 39 (a) which was inserted by the Constitution 42nd Amendment) Act, 1976 provides for Equal Justice and Free Legal Aid. It promotes justice on the basis of equal opportunities. It imposes an imperative duty upon the State to provide free legal aid to the poor litigant so as to secure him equal protection of laws against his well – to – do opponent.

Article 39(b) The expression ‘material source’ under Art. 39 (b) means all things, which are capable producing wealth for the community. It includes those, which are already vested in the State but also in the hands of private individuals. Further, the expression, ‘distribution’ in Art. 39 (b) does not mean that one’s property is taken over and is distributed to others. It also includes nationalization which is an effective means to prevent concentration of wealth in a few hands so as to benefit the society at large.

Article 39(1):- Art. 39(1) was amended by the Constitution (42nd Amendment) Act, 1976 with a view to emphasize the constructive role of the State with regard to children.

Article 47:- Art. 47 provide that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. The improvement of public health also includes the protection and improvement of environment without which public health cannot be assured.

Article 48:- It deals with organization of agriculture and animal husbandry. Art. 48 direct the State to take steps to organize agriculture and animal husbandry on modern and scientific lines.

Article 49:-It deals with protection of monuments and places and objects of national importance. Art. 49 require the State to protect very 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.

Fundamental Duties (51-A):- Art. 51-A was added under the Constitution (42nd Amendment) Act. 1976, which deals with 'Fundamental Duties' under Part IV-A. Art. 51 -A enlists ten fundamental duties designed for restructuring and building a welfare society 'State

Art. 51 -A(g) specifically deals with the fundamental duty with respect to environment. It provides "it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. To put it simply Art. 51-A(g) refers to the fundamental duty of every citizen to protect and improve 'natural environment'. For example Center for Environmental Law, World Wide Fund-India Vs. Union of India.

Conclusion

The constitution of India embodies the framework of protection and preservation of nature without which life cannot be enjoyed. People conscious of environment impact have contributed, through Green Benches of Superior Courts, to

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evolution of public interest law on saving the ecological balance and what has been done so far is too little and what has to be done in immediate future is huge and massive.

“We have to live on the earth. We cannot go and live on the planets.
Let us keep the earth clean. Let us keep the atmosphere peaceful”.

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