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Constitutional provisions and remedies in the area of Environmental Law

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Constitutional provisions related to Environment

The expansive interpretation of 'life' in Art. 21 has led to the salutary development of an environmental jurisprudence in India. Accordingly a number of statutes have been enacted with a view to protect environment against pollution, and an administrative machinery has been put in place for the purpose of enforcement of these statutes.

Specific provisions relating to certain aspects of the environment, more especially for the protection of the forests and wildlife in the country, were incorporated in Part IV- Directive Principles of the State Policy – and List III – The Concurrent List – of the Seventh Schedule of the Constitution.

As a result, the Constitution has now the following provisions specifically relating to environment protection and nature conservation: Part IV: Directive Principles of State Policy (Article 48A): Protection and improvement and safeguarding of forests and wild life: The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

Part IV-A: Fundamental Duties (Article 51-A): It shall be the duty of every citizen of India – (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.

Seventh Schedule (Article 246) List III - Concurrent List Item no. 17 Prevention of cruelty to animals, Item no. 17A Forests, Item no. 17B Protection of wild animals and birds.

New dimensions of Right to life & Environment

The Constitution protects the life of every person in India through Art 21 which reads as follows:

'No person can be deprived of his life and personal liberty except according to the procedure established by law'.

Judicial Interpretation to Right to Life and Environment: The right to healthy environment has been incorporated, directly or indirectly, into the judgments of the court. Link between environmental quality and the right to life was first addressed by a constitutional bench of the Supreme Court in the Charan Lal Sahu Case. In 1991, the Supreme Court interpreted the right to life guaranteed by article 21 of the Constitution to include the right to a wholesome environment.

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The right to live in a clean and healthy environment is a positive dimension of the rights guaranteed under Indian Constitution. The relation of Environment and health through the justice is not a recent invention of the higher judiciary in India. The right has been recognized by the legal system and the judiciary significantly for many decades. The enjoyment of the right to live in a clean and healthy environment today has achieved the status of a fundamental right and for the violation of it, the Constitution of India provides punishment to the wrongdoer and compensation to the victim.

Industrial development and Environment

Environmental worsening could seriously endanger life of present and future generations. The hounrable judges like J. V.R. Krisna Iyer, J. P.N. Bhagvati, J Kuldip Sing, has contributed to improve the situation with the pace of industrial development. Hence the right to life has been used in a diversified manner in India. It includes, inter alia, the right to survive as a species, quality of life, the right to live with dignity, right to good environment and the right to livelihood. In India, these rights have been implicitly recognized as constitutional rights. The right to healthy environment has been incorporated, directly or indirectly, into the judgments of the court. Thus it is clear that article 21 has a multidimensional interpretation. Any random, unusual and fanciful act on the part of any state, depriving the life or personal liberty would be against Article 21 of the Indian constitution.

Right to life, implies the right to live without the harmful surroundings of pollution, environmental pollution, environmental degradation and ecological imbalances. Indian Constitution has recognized the right to life means right to live in an environment of adequate standard and healthy condition.

The apex court in the hierarchy of Nation, the Indian Supreme Court, is an active judiciary. The Supreme Court has created a landmark in the quest of international judicial activism by developing the concept of right to healthy environment as a part of right to life under Art 21 of our Constitution.

The Supreme Court has interpreted Art 21 to give it an expanded meaning of including the right to a clean, safe and healthy environment. Class actions have been entertained by the Supreme Court under Art 32 of the Constitution as being part of public interest litigation actions. The High Courts, also being granted this jurisdiction under Art 226 have intervened by passing writs, orders and directions in appropriate cases, thereby giving birth to an incomparable environmental jurisprudence in the form of the constitutional right to healthy environmen

The Precautionary Principle

It is said that 'a stitch in time saves nine.' The Supreme Court of India has developed three significant principles as 'Precautionary Principle, the Polluter Pays Principle' for the protection of environment and protection of right to life. The three principles were applied together for the first time in by the Supreme Court in Vellore Citizens Welfare Forum v. Union of India, a case concerning pollution being cause

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due to the discharge of untreated effluents from tanneries in the state of Tamil Nadu. The Court, referring to the precautionary principle, polluter pays principle and the new concept of onus of proof, supported with the constitutional provisions of Art. 21, 47, 48A and 51A (g) and declared that these doctrines have become part of the environmental law of the country.

Public Trust Doctrine

The constitution has provided provisions for the remedies and compensation for the breach of fundamental rights, even for the cases related to the environmental incidents, hazardous calamities etc. In this concern another important principle evolved in M.C. Mehta v. Kamal Nath, states that certain common properties such as rivers, forests, seashores and the air were held by Government in Trusteeship for the free and unimpeded use of the general public, this is known as Public Trust Doctrine.

The Supreme Court, in Rural Litigation and Entitlement Kendra v. State of U.P. ordered the closure of certain limestone quarries causing large scale pollution and adversely affecting the safety and health of the people living in the area. Likewise, in M.C. Mehta v. Union of India, the court directed an industry manufacturing hazardous and lethal chemicals and gases posing danger to health and life of workmen and people living in its neighbourhood, to take all necessary safety measures before reopening the plant. In an attempt to maintain the purity and holiness of the River Ganga, tanneries polluting the sacred river were ordered to be closed down.

Directive Principles and Fundamental Duties & Environment

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 endeavour 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

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matters linked to the preservation of natural environment. Parliament's 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.

Constitutional provision and enactment of The Environment Protection Act 1986

The Environment Protection Act 1986 defines environment as : "environment includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro organism and property."

Besides the physical and biological aspect, the "environment" embraces the social, economic, cultural, religious, and several other aspects as well. The environment, thus, is an amalgamation of various factors surroundings an organism that interact not only with the organism but also among themselves. It means the aggregation of all the external conditions and influences affecting life and development of organs of human beings, animals and plants.

Judicial remedies for environment pollution

The remedies available in India for environmental protection comprise of tortuous as well as statutory law remedies. The tortuous remedies available are trespass, nuisance, strict liability and negligence.

The statutory remedies incorporates: Citizen's suit, e.g.

- an activity brought under Section 19 of the Environmental (Protection) Act, 1986,
- an activity under area 133, Criminal Procedure Code, 1973.and
- and activity brought under the Section 268 for open irritation, under Indian Penal Code,1860

Apart from this, a writ petition can be filed under Article 32 in the Supreme Court of India or under Article 226 in the High Court.

Conclusion

The integration of the international principles of environmental law into the Indian legal framework is an important consequence of the emergence of Public Interest Litigation in 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.

Changing trends of innovation and advancement of technology, apart from development additionally expands the risk to human life. Accordingly, there arises an intense and an acute need of the law to keep pace with the need of the society along with individuals. So now the question of environmental protection is a matter of worldwide concern, it is not confined to any country or territory.

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The Indian Judiciary through the constitutional provisions is constantly trying to contribute in the protection of environment and natural flora and fauna. The incorporation of Directive Principles, Fundamental Duties and State responsibilities for the protection of fundamental rights had entrusted nation's debut towards the environment.

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