

## A critical view on the impact of constitution of India as internal regulatory mechanism for environmental issues and policies

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### Abstract

The judiciary has viewed the human rights on one hand and the environmental protection on the other hand as the two faces of the same coin. In modern India, environmental Jurisprudence has gone a long way in acquiring a very seminal importance leaving behind the engraved British Juristic notions as out dated and insufficient. The damage caused to environment by poisonous gases and emissions, industrial effluents, plastic waste, exploitation of natural resources like soil, forests, water supplemented by other equally important factors like poverty, growing population, health hazards, degeneration in quality of life have acquired alarming proportions which cry for a new environmental ethic order and justice in Indian society. Regrettably in India, the initial phase of judicial response to the problems of environment has been of insensitivity and apathy towards environmental issues and problems. The judiciary as a guardian of fundamental right has protected the right of each individual in relation to environment under Art.21 of the Constitution of India. A constitution is a set of laws that a set of people have made and agreed upon for government [1]. These rules together make up, i.e. constitute, what the entity is. The term Constitution can be applied to any overall system of law that defines the functioning of a government, including the development of modern codified environment law. An attempt has been made to analyze how some of the Articles in Constitution of India and the relative judgments have contributed to the enrichment of environmental jurisprudence and to the development of environmental Policies. The analysis seeks the specific content of each judgment and draws a broader picture from part third of the Constitution of India for the protection and development of environment Policies.

**Keywords:** Constitution of India, environmental Jurisprudence.

### Introduction

The United Nations Conference on Human Environment held on in June, 1972 at Stockholm placed the issue of the protection of biosphere on the official agenda of international policy and law. The agenda of the conference consisted of the following:

- (a) Planning and management of human settlements for environmental quality.
- (b) Environmental aspects of natural resources management.
- (c) Identifications and control of pollutants and nuisances of broad international significance.
- (d) Educational, Information, Social and cultural aspects of environmental issues.
- (e) Development and environment.
- (f) International Organizational implications of action proposals.

The Stockholm Conference agendas, proclamations, principles and subsequent global, environment protection efforts shows the words realization of the need to preserve and protect the natural environment. The Conference acclaimed man's fundamental right to adequate conditions of life in an environment of a quality that permitted a life off dignity and well-being.

In United Nations Conference on Human Environment, at Stockholm the then Prime Minister of India Mrs. Gandhi emphasis on the safeguard of natural resources of the earth, including the air, water, land flora and fauna and ecosystem for the benefits of present and future

generations through careful planning or management, as appropriate including the wildlife and projected the nation's commitment to the protection of environment. To comply with the principles of the Stockholm Declarations adopted by the International Conference on Human Environment, the Government of India, by the Constitution 42nd Amendment Act, 1976 made the express provision for the protection and promotion of the environment, by the introduction of Article 48-A and 51-A(g) which form the part of Directive Principles of State Policy and the Fundamental Duties respectively[2].

*Article 48-A:* By Constitution (42nd Amend) Act, Sec.10 (w.e.f. 3.1.1977)

Protection and improvement of environment and safeguarding of forests and wild life: "The State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country".

*Article 51-A (g):* By Constitution (42nd Amend) Act, Sec.11 (w.e.f. 3.1.1977)

"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 the Indian Constitution makes two fold provisions as follows:

- (a) On the one hand, it gives directive to the State for the protection and improvement of environment.
- (b) On the other hand the citizens owe a constitutional duty to protect and improve natural environment.

In protecting the natural environment Article 48-A is of immense importance today. Because with the activist approach of judiciary in India the legal value of Directive Principles jurisprudence has constantly grown up in the Indian Constitutional set-up. The seeds of such provision could be seen in Article 47 of the constitution which commands the State to improve the standard of living and public health. To fulfill this constitutional goal, it is necessary that the State should provide pollution free environment. The Government of India to accelerate the pace for environment protection by amendment of constitution.

### 1. Seventh schedule of the constitution:

In the Concurrent List, 42nd Amendment Inserted.

- (a) Entry 17-A, providing for forests.
- (b) Entry 17-B, for the protection of wild animals and birds.
- (c) Entry 20-A, providing for population control and family planning.

### 2. Eleventh schedule of the constitution.

This new schedule is added by the Constitution 73rd Amendment Act, 1992 which received the assent of President on 20.4.1993. This schedule has 8 entries (2, 3, 6, 7, 11, 12, 15 and 29) providing for environmental protection and conservation.

### 3. Twelfth schedule of the constitution.

The entry number 8 of this schedule added to the constitutional text by the 74th Amendment Act, 1992, which received the assent of the President on 20.4.1993 provided for the Urban Local bodies, with the function of environment and promotion of ecological aspects to them.

#### *List I (union list) entries:*

- 52. Industries,
- 53. Regulation and development of oil fields and mineral oil/resources,
- 54. Regulation of mines and mineral development,
- 56. Regulation and development of inter-state rivers and river valleys,
- 57. Fishing and fisheries beyond territorial waters.

*List II (state list) entries:* 6. Public health and sanitation;  
14. Agriculture protection against pest and prevention of plant diseases;

18. Land & Colonization etc;

21. Fisheries;

23. Regulation of Mines and Mineral development subject to the provisions;

24. Industries subject to the provisions.

#### **List III (common or concurrent list) entries**

17-A Forests;

17-B Protection and wild animals and birds;

20. Economic and social planning;

20-A Population control and family planning.

The Eleventh Schedule, assign the functions of soil conservation, water management, social and forest forestry, drinking water, fuel and fodder, etc. to the Panchayats with a view to environmental management. The 12th Schedule commands the urban local bodies such as municipalities to perform the functions of Protection of environment and promotion of ecological aspects [3].

The constitutional changes effected in the 7<sup>th</sup> Schedule by the 42nd Amendment Act, 1976 is a milestone steps, in the direction of the protection of environment. Because the subject of forests originally was in the State list as entry 19, this resulted into no uniform policy by the State so as to protect the forests. By placing the item 'forest' now in the concurrent list by the entry 17-A, along with the State, Parliament has acquired a law making power. The Government of India in 1980 set up the Ministry of environment and Forests. The government adopted the new National Forest Policy in 1988. The insertion of the entry 17-B in the concurrent list has empowered the Parliament to enact a law with a view to protection of wild animals and birds. Although we had a comprehensive legislation in the form of Wildlife Protection Act of 1972 the 42nd Amendment has considered the wildlife along with forests [4]. India has also formulated National Action plan for the Protection of wild life. The new entry 20-A in the concurrent list empowers the Parliament to regulate the population explosion one, of the prime cause of the environmental pollution.

#### *Fundamental rights*

The judiciary's dynamic interpretation of fundamental rights have regulated into the rights to healthy environment from the following Articles [5].

- (a) Article 14: "State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India".
- (b) Article 19 (6) : State is empowered to make any law imposing in the interests of the general public, reasonable restrictions on the exercise of freedom to practice any profession, or to carry on any occupation, trade or business guaranteed by (1) (g).
- (c) Article 21: "No person shall be deprived of his life or personal liberty except according to procedure established by law".

#### *Right to environment*

The importation of the 'due process' clause by the activist approach of the Supreme Court in Maneka Gandhi's case (AIR 1978 SC 597) has revolutionized the ambit and scope of the expression 'right to life' embodied in Article 21 of the Constitution. The right to live in healthy environment is one more golden feather of article 21. This right connotes that the enjoyment of life and its attainment and fulfillment guaranteed by Article 21 embraces the protection and preservation of nature's gift without which



life cannot be enjoyed. The Supreme Court of India, in 1980, indirectly conceived this right in a monumental judgment in the case of *Ratlam Municipality Vs Vardichand* (AIR 1980 SC1622). In this case the neglect of sanitation of the town of Ratlam by Municipal Council Health hazard. The human rights under Part III of the Constitution have respected by the State regardless provision. Decency and dignity race non-negotiable facts of human rights and are a first charge on local self governing bodies.

The Court's decision was founded on its earlier decision in *Govind Vs. Shanti Sarup* (AIR 1957 SC 1943) where Section 133 of the code of Criminal procedure was used by the Court to preserve the environment in the interest of "health, Safety and convenience of public a large". It is simply clear that, the judgment is based on the right to live with decency and dignity as provided in the right to life. The Court continued its hidden approach of not referring to Article 21 directly, in another case *Rural litigation and Entitlement Kendra Vs. State of Uttar Pradesh* (AIR 1985 SC p52) although the Court has successfully read Article 21 in Article 48-A of the Constitution. In this case, the Apex Court converted a letter into written petition alleging that the operation of unauthorised and illegal, mining in the Mussorie - Dehradun belt affected the ecology of the areas and led to environment disorder. The Bench ordered as closing down of mining operations on the ground that lime stone quarries operation causing ecological imbalance and a hazard to healthy environment. The striking feature of this decision is that, the Court converted a letter in the writ petition under Article 32, without referring to any article from the chapter on fundamental rights. From the jurists process, it could be submitted that Court restrained itself from invoking Article 21 directly, but regarded the right to live in healthy environment as a part of fundamental right [6].

In *M. C. Mehta Vs. Shriram Food and Fertilizer Industries and Union of India or Oleum Gas Leak Case-I* (AIR 1987 SC 1965) petitioner filed the write against the oleum gas leakage and for closing down one of the units of Shriram food and Fertilizers industries belonging to Delhi Cloth Mills Ltd. The Court allowed to restart plant subject to certain stringent conditions laid down in the order. But the Court held that enterprise engaged in any hazardous or inherently dangerous industry which could pose a threat to public health and absolute duty to the community to ensure that no harm resulted to anyone.

In *III Oleum Gas Leak Case, M. C. Mehta Vs. Union of India* (AIR 1997 SC 1086), Chief Justice P. N. Bhagwati (as he then was) speaking for the Court clearly treated the lights to live in a healthy environment as fundamental right under Article 21 of the Constitution. In the judgment Chief Justice P. N. Bhagwati stressed on the need to develop a law recognizing the rule of strict and absolute liability in cases of hazardous or dangerous industries operating at the cost of environment and the human life.

The significant feature of this litigation is that the Court decided the important issues of liability and quantum of compensation without making a decision on the issue of assumption of jurisdiction in a write petition for orders against Shreeram Enterprises on the ground of violation of Article 21 of the Constitution. In the case of *Subhash Kumar Vs. State of Bihar* (AIR 1991 SC 424) the petitioner by way of public interest litigation, filed a petition for ensuring enjoyment of pollution free water and air. Justice K. N. Singh and Justice N. D. Ojha held: "Right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of life".

If anything endangerous or impairs that quality of life in derogation of laws, a citizen has a right to refer Article 32 of the Constitution for removing the pollution of water or air which may determined to the quality of life[7]. Justice P. N. Bhagwati's last judgment on the eve of his retirement in *M. C. Mehta's* case has opened new horizon in the development of environmental law and also administration of environmental justice. This aspect has been very rightly upheld by the summit Court in the case of *M.C. Mehta V. Union of India* (AIR 1992 SC 382).

### Conclusion

With due respect to the above views it is submitted that it would be better if such matters are left to the specific legislation or judicial laws rather than accumulating everything in the constitutional text. After all the sanctify of the document called as the fundamental law of the land, the constitution must be upheld so as to distinguish it from any other ordinary legislation. The exploration of the different dimensions of the Article 21 is on going process and the new horizons of the article 21 are coming up from case to case [8].

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