



## Protection of Environment in India-A Matter of Prime Concern for both the Legislature and the Judiciary

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### ABSTRACT

Environment forms the life-line of the living beings of this earth. History reveals the existence of every human civilization being completely dependent upon its surroundings, i.e. the environment in which it lived. In view of the role the environment plays for the existence of the living beings, it is the prime duty of every government to give utmost importance for the protection of the environment. Through this Article the author tried to make an attempt to discuss the steps taken by the government of India by inserting various provisions in the Supreme law of the land, i.e. the Constitution of India for the protection of the environment and the role played by the judiciary whenever the govt. lags behind in properly implanting the statutory as well as the Constitutional provisions.

**KEYWORDS :** Constitution, Environment, judiciary

### Introduction

Protection of environment was not a new concept for the Indian sub continent as the concept was already in existence since time immemorial (as is evident from various Vedic literatures). Even though express provisions for the same were provided under various central as well as State Acts, but till 1976 there was no such express provision mentioned under the Constitution of India i.e. in the Supreme Law of the land. It is only in 1976 through 42<sup>nd</sup> Constitutional amendment Articles 48A & 51A were inserted in the Constitution. The amendment was in reality the consequence of the after effect of the Stockholm Declaration of 1972 which was perhaps the first major attempt made internationally to conserve and protect the environment. In that Conference, the then Prime Minister of India, Mrs. Indira Gandhi showing deep concern on major environmental problems being faced by the world community at large tried to identify the root cause co-relating three interdependent problems like population, pollution and poverty and appealed for an integrated approach to deal with the problem. This Declaration in fact lead to various legislative measures being adopted by different countries to protect and improve the environment.

Indian Constitution-makers, even though had not mentioned any specific provision for the protection of environment at the time of framing the Constitution, but the Preamble of Indian Constitution nonetheless ensured a socialistic pattern of the society with dignity of the individual that included a decent standard of living in a pollution-free environment.

### Provisions for Environmental Protection under the Indian Constitution

**Article 21-** This Article forms the very essence of Fundamental Rights enshrined under the Indian Constitution that ensures right to life and personal liberty of individuals within the territory of India. Though categorically it has not included the term 'environment' within it, but the judiciary has never taken its step back in recognizing right to life including right to live in a pollution-free environment.

**Article 47-** This Article casts a duty upon the State to raise the standard of living of its people and the improvement of public health that impliedly includes protection of environment without which public health cannot be assured.

**Article 48-** It directs the State to take necessary steps for organizing agriculture and animal husbandry by using modern and scientific methods. More particularly, it points towards preservation and improvement of breeds and prohibition of slaughter of cows and calves which in a way a step towards protection of animals those form an indispensable part of the environment.

**Article 48-A-** This Article as added by the 42<sup>nd</sup> Constitutional Amendment categorically imposes responsibility on the State to take adequate steps for protection of environment and safeguard the forests and wildlife of the Country.

**Article 51-A (g) -** In the same 42<sup>nd</sup> Constitutional Amendment Fundamental Duties were added to the Constitution within which one such duty was imposed on the citizen of India to protect and improve the natural environment as well as to show compassion towards all living creatures.

Besides the Articles mentioned above, the **Seventh Schedule** of the Constitution too includes various provisions relating to environment like the Union List includes provisions relating to Industries, mines & minerals, oil fields & mineral oil resources, development of inter- state rivers & river- valleys and fisheries, whereas the State List includes provisions for development of public health and sanitation with regard to agriculture, land, fisheries etc and the Concurrent List includes provisions for protection of forests, wild animals, population control etc.

Furthermore the Constitutional 73<sup>rd</sup> and 74<sup>th</sup> Amendment those inserted the provisions for Panchayatiraj and Municipalities vide Part IX and IX A respectively empowered the Panchayats and Municipalities to take various steps in the grass-root level for the protection and development of environment. The provisions include steps to be adopted by the Panchayats for improvement of agriculture, land, animal husbandry, forestry etc. as included under the **Eleventh Schedule** and those to be adopted by the Municipalities include urban planning, construction, public health, sanitation, improvement and up-gradation of slums, regulation of slaughter houses etc. as provided under the **Twelfth Schedule**.

### Role played by the Judiciary in Protecting the Environment

The judiciary in India has played the much- laudable role in protecting the environment by giving widest possible interpretation to the words inserted by the legislature.

In *Rural Litigation and Entitlement Kendra v. State of U.P.*<sup>1</sup>, the Court considering the pollution caused by the lime stone quarries severely affecting the safety and health of the people living in the area ordered the closure of certain quarries.

Moving a step further, in *Subhas Kumar v. State of Bihar*<sup>2</sup> the Court held that enjoyment of pollution-free environment is included within 'right to life' under Article 21 of the Indian Constitution. In this case the court entertained a public interest litigation to be maintainable as it was made by persons affected due to environmental pollution.

In the famous Oleum gas leakage (*Shiram Food and Fertilizer*)<sup>3</sup>

case, the Supreme Court entertaining a public interest litigation regarding leakage of Chlorine gas from the plant causing danger to the health and life of the workmen and other people living nearby, directed the company to deposit a huge amount as compensation and to take all necessary safety measures before reopening the plant.

In **M.C.Mehta v. Union of India**<sup>4</sup>, the court showing deep concern over the non- implementation of express provisions contained in the Water (Prevention and Control of Pollution) Act and the Environmental (Protection) Act, ordered for closure of tanneries polluting river Ganga at a place near Kanpur.

This decision of the Apex Court was followed by another case filed by the same person through public interest litigation against the pollution of river Ganga requiring the Court to issue appropriate directions to the authorities to take effective steps for prevention and control of Ganga water pollution<sup>5</sup>. Accordingly the directed the Nagar Mahapalika to submit its proposals for effective control and prevention of water pollution within six months and also to get the dairies responsible for the pollution shifted to a place outside the city so that it may not reach the river Ganga.

As per the directions of the Court the above two decisions shall apply *mutatis mutandis* to all the municipalities which have the jurisdiction over the areas through which the river Ganga flows.

The Court has always given prime emphasis on the subject of pollution-free environment as it thought any disturbance of the basic environment elements necessary for life like air, water and soil, would be hazardous to 'life' within the purview of Article 21 of the Constitution. Adhering the 'doctrine of public trust', the Court in **M.C. Mehta v. Kamal Nath**<sup>6</sup> held that natural resources are gifts of nature and as a trustee of these resources, the State is duty bound to protect them.

Correlating the importance of environment in human life, the Court in **State of M.P. v. Kedia Leather & Liquor Ltd.**<sup>7</sup> moved further to held that hygienic environment is an integral facet of healthy life and right to live with human dignity becomes illusory in the absence of humane and healthy environment.

All these directives made by the Apex Court therefore impose a Constitutional challenge before the government not only to ensure and safeguard proper environment but also to take adequate measures to promote, protect and improve the environment. In **T.N. Godavarman Thirumulpad V. Union of India**<sup>8</sup> the Court has laid down much emphasis on the role to be taken by the government for the conservation of forests saying that environment is not the property of any state but is a national asset for which it is the obligation of all to conserve the same by making proper utilization with regard to the principles of sustainable development and intergenerational equity.

When several petitions on the rapid deterioration of quality of air in the capital city of Delhi were filed in the Supreme Court, the Court has directed the government to put a ban on the running of diesel buses in the city and ordered for the entire fleet of public transport buses to be run on CNG instead of diesel<sup>9</sup>.

Taking serious note of environmental issues in **Vellore Citizens Welfare Forum v. Union of India**<sup>10</sup>, the Court evolved a special principle on the imposition of burden of proof in environmental cases and held that the 'onus of proof' lies in such cases on the actor or the developer/ industrialist to show that his action is environmentally benign.

### Conclusion

The role played by the judiciary in India is really praiseworthy. The government is powerful enough to comply with the various provisions concerning the protection of environment, but because

of lack of proper implementation procedure the provisions remain within the statute book only. That's why the judiciary has come forward, as and when required to provide appropriate directions to the government to take necessary steps for the protection of the environment so as to implement the provisions of the statute in its true letter and spirit. Broader interpretation of the word 'life' under Article 21 of the Constitution to include right to live in a pollution-free atmosphere proves the concern of the judiciary for the protection of environment.

### References:

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2. AIR 1991 SC 420
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4. (1987) 4 SCC 463
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6. (1997) 1 SCC 388
7. AIR 2003 SC 727
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10. AIR 1996 SC 2721