

## **Environmental Protection and Constitutional Guarantees: The Role of Constitution in Safeguarding the Earth**

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### **Abstract**

Even before Indian independence in 1947, many environmental legislations existed however the important impetus for conveyance about a well-developed framework came solely when the world organisation Conference on the Human surroundings. Under the influence of this declaration, the National Council for Environmental Policy and designing at intervals the Department of Science and Technology was started in 1972. This Council later evolved into a full-fledged Ministry of surroundings and Forests in 1985 that today is that the apex administrative unit within the country for control and guaranteeing environmental protection.

When the national capital Conference, in 1976, Constitutional sanction was given to environmental considerations through the forty second change, that incorporated them into the Directive Principles of State Policy and elementary Rights and Duties. Since the Nineteen Seventies an in-depth network of environmental legislation has matured within the country. The pollution management boards (CPCB Central Pollution Control Board and SPCBs State Pollution instrument panels) kind the restrictive and body core of the arena. A policy framework has additionally been developed to enrich the legislative provisions.

**Keywords:** Environmental Law, Environmental Justice, Constitutional Law, Indian Constitution

### **Introduction**

Constitution of India has hugely mature and evolved over the years and is alleged to be one in all the foremost amended constitution to this point. within the Indian background, the standing of setting protection has not solely raised to the basic law of land however once an extended time in recent past it's corresponded with rights and is currently accepted likewise established indisputable fact that it's basic human right to each national of India. The fundamental duties enshrined in our constitution imposes duty on people to guard setting so as to produce every and each human clean setting and a life with dignity and harmony.

### **International frame work for the Protection of Environment**

A surfeit of international agreements addressing environmental protection has been created and Republic of India has been a human thereto. as a result of at the national capital declaration in 1972, it had been command that the planet has one setting. Republic of India being a human to such international pacts is underneath an obligation to translate those provisions and abide by them

within the country. This has been clearly explicit in Article 51(c) of the Indian constitution that state shall foster respect for law of nations and therefore the obligations of the treaties. On contrary to the present, the opposite essential provision dealing in protective the setting is Article 253 of the Constitution that sanctions the Parliament of our country to form laws which might be applicable to the full or any territory of the country for implementing any agreement or convention signed with the opposite country or countries. Parliament will enact to implement selections taken at any conference on a global level.

### **Legal and Constitutional Framework for Environmental Protection**

#### **Directive Principles of State Policy (DPSP) - Article 48A.**

The Directive principles under the Indian constitution directed towards ideals of building welfare state. Healthy atmosphere is additionally one in every of the weather of state. Article 47 provides that the State shall regard the raising of the extent of nutrition and therefore the normal of living of its folks and therefore the advance of public health additionally includes the protection and improvement of atmosphere while not that public health can't be assured. Article 48 deals with organization of agriculture and farming. It directs the State to require steps to organize agriculture and farming on fashionable and scientific lines. specifically, it ought to take steps for protective and rising the breeds and prohibiting the slaughter of cows and calves and alternative milch and draught *Bos taurus*. Article 48A of the constitution says that "the state shall endeavor to safeguard and improve the atmosphere and to safeguard the forests and wild lifetime of the country.

In *Vellore Citizens' Welfare Forum v. Union of India* [1] the Supreme court held that it's essential to include the international customary laws within the municipal laws, provided they're not contrary to them. It's an accepted principle of law. Thus, it had been thought-about essential to follow international laws by the domestic courts of law. Responsibility Of State For Setting Protection Article 47 puts an obligation on the state that it shall stare upon the increasing level of nutrition and commonplace of living of its individuals. Also, the first duty of the state shall be to enhance public health. it's the duty of the state to ban apart from healthful functions, the consumption of alcohol and medicines which might be injurious to the health of the living beings and cause an excellent threat to their lives.

In the case of *Hamid Khan v. State of Madhya Pradesh*, [2] the state was negligent to produce water from the handpumps, large harm was caused to the voters, that affected their health massively. Hence, thanks to this gross negligence on a part of the state, it had been command that the state didn't perform its basic duty. In the year 1976, the constitution was amended. With this change, Article 48-A was inserted within the constitution with the aim to afford higher provisions thus on preserve and shield the setting.

#### **Fundamental Rights and Environmental Protection - Article 21 (Right to Life), Article 19, etc.**

Art-19(1) (a) read with Art-21, the constitution guarantees right to smart setting and right to live peacefully. Art-21 guarantees right to life broadly. Right to fresh air and clean environment also is fundamental right.

In *PA Jacob vs. The Superintendent of Police Kottayam*, the Kerala High Court command that freedom of speech beneath art-19 (1)(a) does not embrace freedom to use loud speakers or sound amplifiers. Thus, pollution caused by the loud speakers could also be controlled beneath article nineteen (1) (a) of the constitution. Article nineteen (1) (g) of the Indian constitution confers basic right every national to follow any business activities A national cannot continue endeavour, if it's health hazards to the society or general public. Thus, safeguards for setting protection square measure inherent throughout this.

### **Fundamental Duties - Article 51A(g)**

Article 48A and 51 (A)(g) A global adaption consciousness for the protection of the environment at intervals the seventies prompted the Indian Government to enact the 42<sup>nd</sup> modification (1976) to the Constitution. This added Art. 48A to the Directive Principles of State Policy. It Declares: - "the State shall endeavour to protect and improve the environment and to safeguard the forests and lifetime of the country".

A similar responsibility obligatory upon on every national at intervals the type of elementary Duty –Art. 51(A) (g) "to defend and improve the natural surroundings alongside forest, lakes, rivers and life, and to possess compassion for living creatures". The amendments in addition introduced positive changes at intervals the Seventh Schedule of the Constitution.

In *L.K Kollwal V State of Rajasthan*, a simple legal instrument petition by voters of Jaipur compelled the municipal authorities to provide adequate sanitation. The court observes that after every national owes a constitutional duty to protect the environment (Art.51A), the national ought to be in addition entitled to enlist the court's aid in imposing that duty against recalcitrant State agencies. The Court gave the administration six month to wash up the complete city, and discharged the plea of lack of funds and workers.

### **Judicial Role in Environmental Protection**

Judiciary has played important role in protecting the environment by entertaining the PILs and environmental cases. Some of the cases worth discussing in the following paras.

In *M.C Mehta v. Union*, popularly called was another judgement of the court passed on the idea of the precautional principle. during this case, public interest proceedings was filed alleging the degradation of mausoleum thanks to environmental pollution. Court referred the case to the skilled committee to hunt technical on the matter. On the idea of the report of the committee. This monument may be a monument of international repute. The industries set within the Taj Trapezium Zone were exploitation coke/coal because the industrial fuel, therefore emitting effluents.

The atmosphere, thus, is associate merger of assorted factors surroundings associate organism that act not solely with the organism however conjointly among themselves. It suggests that the aggregation of all the external conditions and influences moving life and development of organs of individuals, animals and plants. Policy and Laws in Ancient India: In the ancient Asian country, protection and cleansing from atmosphere was the essence of the sacred writing culture.

In *M.C Mehta v. Kamal Nath*, 1997, the regime granted a lease of forest land to a non-public company having a stuff set at the bank of stream Beas, for industrial functions. The edifice

management was intervening with the natural flow of the stream by block the natural spill channel of the stream. This was questioned before the court through public interest proceedings.

In the historic case of the oleum gas leak from the Shriram Food and Fertiliser factory in Delhi, in 1986, the Supreme Court ordered the management to pay compensation to the victims of the gas leak. The "absolute liability" of a hazardous chemical manufacturer to give compensation to all those affected by an accident was introduced in this case and it was the first time compensation was paid to victims.

In 1980, the Kerala High Court threw out a writ filed by the Society for the Protection of the Silent Valley seeking a ban on construction of a hydro-electric project in the valley. However, despite an unfavourable judgement, active lobbying and grassroots action by environmentalists stopped the project.

In 1985, activist-advocate M C Mehta filed a writ petition in the Supreme Court to highlight the pollution of the Ganga by industries and municipalities located on its banks. In a historic judgement in 1987, the court ordered the closure of a number of polluting tanneries near Kanpur. Justice E S Venkataramiah, in his judgement, observed: "Just like an industry which cannot pay minimum wages to its workers cannot be allowed to exist, a tannery which cannot set up a primary treatment plant cannot be permitted to continue to be in existence."

In Vellore voters Welfare Forum v. Union of India. In *M.C Mehta v. Union of india and Ors* the polluter pays principle was applied wherever industries were directed to be settled and these industries were ordered to pay 25<sup>th</sup> of the value of the land. The industries that didn't pay the value of the land and didn't fits the direction of the court was additional directed to be closed. The Hon'ble court once more repaired to.

Precautionary Principle 15 of the Rio Declaration provides for the precautional principle. So as to guard the surroundings, it's essential to use the precautional principle. This principle implies that wherever there's an opportunity of nice threat or irreversible injury to the surroundings, lack of full scientific certainty can't be taken as a reason of not supply the efficient strategies.

## Conclusion

This article begins with birthing down stress on why environmental protection is critical, why did a requirement arise to guard the surroundings followed by the causes of ecological degradation within the introductory half. varied reasons are thought of to be a significant think about polluting the surroundings and moving the lives of the individuals and move a good threat to different living beings of the country.

Judiciary has to play Pro-active role in matters of environment in order to curb environmental pollution and similarly every citizen is responsible to care for mother earth

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[1] Vellore Citizens' Welfare Forum v. Union of India AIR 1996 SC 2715

[2] AIR 1997 MP 191, 1997 (1) MPLJ 587