

RIGHT TO CLEAN AND HEALTHY ENVIRONMENT – CONSTITUTIONAL PERSPECTIVE

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ABSTRACT:

Man has the elemental right to freedom, equality and adequate conditions of life. Connecting human rights and atmosphere could be a valuable source book that explores the uncharted territory that lies between environmental and human rights legislation. The present paper aims to debate the provisions expressed in Indian Constitution that make sure the rights to measure in a very healthy and pollution free atmosphere. In Republic of India the priority for environment protection has not solely been raised to the standing of organic law of the land, however it's conjointly married with the right of each individual to measure in pollution free environment with full human dignity. Article 14, 21, 47, 48(A) defend the correct of the people to measure in healthy atmosphere as a rider to balance the ecological imbalance. Article 51-A (g) specially deals with basic duty with reference to atmosphere that it shall be the duty of each subject of Republic of India to guard and improve the natural atmosphere as well as forests, lakes, rivers and wildlife and to possess compassion for living creatures.

KEYWORDS:

Fundamental Rights, Environment Law, Right to Life, Right to Equality, Fundamental Duties

Aim of the Study:

To study about articles that provide a healthy and safe environment as a basic right, To analyse whether the constitutional provisions provide a healthy and safe environment.

HYPOTHESIS:

The constitution of India under article 14, 21, 19, 48A, 51A extensively provides the right to safe and healthy environment.

NULL HYPOTHESIS:

Constitutional provisions and other acts does not effectively provide a clean and healthy environment.

RESEARCH METHODOLOGY:

This is a doctrinal research and all materials collected are secondary data. Question:

Research question:

Does constitutional provisions provide the right to clean and healthy environment?

INTRODUCTION:

The relationship between man and his atmosphere is undergoing profound changes within the wake of recent scientific and technological developments. In India, from time to time varied laws are enacted for the protection of environment, flora and fauna, and Indian Constitution is that the first constitution within the world that contains specific provisions for the protection and improvement of environment. In India, visible of the assorted constitutional provisions and different statutory provisions contained in varied laws with reference to atmosphere protection, the Supreme Court has command that the essential feature of “sustainable development” equivalent to the “Precautionary Principle” and also the “Polluter Pays Principle” area unit a part of Environmental law of the Country. The aim of this paper is thus to study the constitutional obligations binding on citizens and state.

Historical Overview:

The environment Protection Act 1986 defines environment as

“environment includes water, air and land and also the inter-relationship that exists among and between water, air and land, and people in general, alternative living creatures, plants, small organism and property.”

Besides the physical and biological side, the “environment” embraces the social, economic, cultural, religious, and several other aspects in addition. The environment, thus, is Associate in Nursing uniting of varied factors surroundings Associate in Nursing organism that move not solely with the organism however conjointly among themselves. It suggests that the aggregation of all the external conditions and influences touching life and development of organs of people in general, animals and plants.

Policy and Laws in Ancient India:

In the ancient India, protection and improvement of surroundings was the essence of the sacred writing culture. The conservation of the surroundings fashioned an avid article of religion, mirrored within the daily lives of the individuals and conjointly enshrined in story lore, art, culture and faith. In Hindu theology forests, trees and life protection command an area of special reference.

Policy and Laws in British India:

By around 1860, Great Britain had emerged because the world leader in deforestation, devastation its own woods and also the forest of Ireland, South Africa and north Japanese u. s. to draw timber for building, iron-smelting and farming. Within the early nineteenth century, the dominion dole out a fierce onslaught on the sub continent’s forests. The revenue orientation of the colonial land policy conjointly worked towards the denunciation of forests.

The imperial forest department was fashioned in 1864, with the assistance of specialists from European nation, the country that was at the time the leading European nation in forest management. the primary inspector-general of forests, Maria Magdalene von Losch Brandish, had been a life scientist and recognise amazing task of checking the deforestation, shaping legal mechanism to claim and safeguard states management over the forests. it had been his twin sense that the railway well-grooved the crucial watershed with relation to the water management in India- the requirement was felt to begin Associate in Nursing applicable

department, and for its effective functioning legislation was needed to curtail the antecedently untouched access enjoyed by the agricultural communities.

Policy and Laws post-independence of India:

The Indian Constitution, as adopted in 1950, didn't traumatize that the topic of environment or interference and management of pollution intrinsically (until 1976 Amendment). The initial text of the constitution below Article 372(1) has incorporated the sooner existing laws into the current system and provides that nevertheless the repeal by this constitution of enactment spoken in article 397, however subjected to the opposite provisions of the constitution, all laws operative straightaway before the commencement of the constitution shall remain operative till altered, repealed or amended by a competent general assembly or alternative competent authority. As a result, even once 5 decades of independence. The superfluity of such laws continues to be operational with none important changes in them.

The Principles on environment:

With a read to protective and rising the surroundings, completely different legislations are created and different laws, rules are issued. The government of India, through its Ministry of Surroundings and Forests is administering has enacted nationwide comprehensive laws.

1972 Capital of Sweden Declaration affirms that "Man has the elemental right to freedom, equality and adequate conditions of life, in a surrounding environment of quality that allows a lifetime of dignity and well-being, and he bears a solemn responsibility to safeguard and improve the surroundings for gift and future generations..." This shows that it's been internationally recognized that man's elementary rights embrace the requirement to measure in a surrounding uncontaminated surroundings however it conjointly puts forth man's obligation to safeguard the environment for posterity.

The Supreme Court has arranged down that the "Precautionary principle" and also the "Polluter Pays Principle" essential options of "sustainable development". These ideas are a part of environment Law of the country.

The "Precautionary Principle" establishes that an absence of data doesn't justify the absence of management measures. On the contrary, management measures ought to be established so as to take care of the conservation of the resources. The assumptions and ways used for the determination of the scientific basis of the management ought to be given.

The essential ingredients of the precautionary principle are:

- (i) Environmental measures- by the authorities and also the statutory authorities- should anticipate, stop and attack the causes of surroundings degradation.
- (ii) Once there were threats of great and irreversible injury, lack of scientific certainty mustn't be used as a reason for suspending live to stop environmental degradation.
- (iii) The “Onus of Proof” is on the actor or the developer to point out that his action is environmentally benign.
- (iv) Precautionary duties should not solely be triggered by the suspicion of concrete danger however conjointly by concern or risk potential.

In *M.C. Mehta v Union of India (CNG Vehicle Case)* (AIR 2002 SC 1696)

The supreme court determined that any ‘auto-policy’ framed by the govt should, therefore, unavoidably change to the constitutional principles well as preponderating statutory duties solid upon the government underneath the Environmental Protection Agency. The motorcar policy should adopt a ‘precautionary principles’ and create advised recommendations that balance the wants of transportation with the requirement to shield the surroundings.

The “polluter pays” principle transpire within the 1970's once the importance of the surroundings and its protection was taken in world over. it absolutely was later promoted by the Organization for Economic Cooperation and development (OECD). The ‘polluter pays’ principle as taken by the Court implies that absolutely the liability for hurt to the surroundings extends not solely to compensate the victims of pollution however additionally the price of restoring the environmental degradation.

In alternative words, polluter ought to bear the price of pollution because the polluter is chargeable for pollution’. The principle demands that monetary prices of preventing or

remedying injury caused by pollution ought to have it away the undertakings that cause pollution.

It may be noted that the polluter pays principle evolved out of the rule of 'absolute liability' as set down by the apex court in Sriram Gas Leak Case.

Sustainable Development

Sustainable Development means that an integration of development and surroundings imperative it means that development harmonized with environmental thought. To be property, development should possess each economic and ecological property. It's a development method wherever exploitation of resources, direction of investment, orientation of technology development and institutional changes area unit tired harmony. Sustainable development additionally implies native management over the resource use, and is that the solely path for preserving and promoting socio-economic successfulness in a very democratic kind.

'eco-development' may be a connected conception. It's a method of ecologically sound development, of positive management of surroundings for human edges. Let's say ban tree felling in reserve forests and allowing gather of minor forest product by rural poor and tribal; development of community or common lands for rural subsistence desires of industries, cities and villages. These area unit the parts of the "new development strategies". The part of eco-developmental therefore includes different development strategies; biogas, substitute for natural resources, social biology, small irrigation and use of waste to stop pollution.

Vellore citizens Case:

In a landmark judgment wherever the principle of property development has been adopted by the Supreme Court as a equalization conception, whereas rejecting the previous notion that development and environmental protection cannot go along, the apex court control the read that property development has currently come back to be accepted as "a viable conception to eradicate economic condition and improve the standard of human life

whereas living inside the carrying capability of the supporting eco system.” Thus, pollution created as a consequence of development should be in proportion to with the carrying capability of our system.

FACTS - During this case, certain tanneries within the State of tamil nadu were discharging untreated effluent into agricultural fields, roadsides, waterways as open lands. The untreated effluent finally discharges within the watercourse that has the most supply of water system to the residence of Vellore. The Supreme Court issued comprehensive directions for maintaining the standards stipulated by the Pollution control panel.

Observations

The Supreme Court Observe that the “precautionary principle” and also the “polluter pays principle” area unit a part of the environment law of the country. These principles area unit essential options of “Sustainable Development.” The “precautionary principle” within the context of the municipal law means: (i)Environmental measures by the regime and also the statutory authorities – should anticipate , forestall and attack the explanation for the environmental degradation(ii) wherever there area unit threats of great irreversible damages, lack of scientific certainty mustn't be used as a reason for suspending measures to stop environmental degradation .(iii) The “onus of proof “in on the actor /industrialist to point out that his action is environmentally benign.

DECISION: - The Supreme Court directed the Central government to represent an authority underneath sec. three of the surroundings Act, 1986 and confer on the aforementioned authority all the powers necessary to wear down true created by the powers necessary to wear down true created by the tanneries and alternative polluting industries within the State of province. The authority (headed by retired decide of the High Court) shall implement the preventative and polluter pays principles. The authority ought to reason the compensation underneath 2 heads, namely, for reserving the ecology and for the payment to people.

CONSTITUTIONAL HISTORY:

Part III of the constitution contains a protracted list of basic rights. This chapter of the constitution of India has all right been delineate because the Magna Charta of India. As early as 1214 English people exacted associate assurance from King John for respect of the then ancient liberties. The Magna Charta is that the proof of their success that may be a document. This is the 1st document concerning the basic rights of the voters. Thereafter from time to time the king had accede to several rights to his subjects. In 1689 the Bill of rights was written consolidating all vital rights and liberties of English people. In France Declaration of Rights of man and therefore the subject (1789) declared the natural, inalienable and sacred rights of Man. Following the spirit of the Magna Charta of Brits and therefore the Declaration of the Rights of the person and therefore the subject of France, the Americans incorporated the Bill of rights in their Constitution. The Americans were 1st to grant Bill of Rights a Constitutional standing. so once the constitution of India was being framed the background for the incorporation of Bill of Rights was already gift. The framers took inspiration from this and incorporated a full Chapter within the constitution addressing basic rights. But the declaration of basic rights within the Indian Constitution is that the most elaborate and comprehensive nonetheless framed by any State.

The inclusion of a Chapter of basic Rights within the Constitution of India is in accordance with the trend of contemporary democratic thought, the thought being to preserve that which is associate indispensable condition of a free society. The aim of getting a declaration of fundamental rights is that bound elementary rights, such as, right to life, liberty, freedom of speech, freedom of religion then on, ought to be thought to be inviolable below all conditions and that the shifting majority in general assembly of the country mustn't have a freedom in interfering with these basic rights.

In *Mountain State State Board of Education v. Barnette*, Jackson J. explaining the character and the purpose of the Bill of Rights observed: “the terribly purpose of a Bill of Rights was to withdraw bound subjects from the vicissitudes of political contestation, to put them on the far side the reach of majorities and officers and to ascertain them as legal principles to be applied by the Courts. One’s right to life, liberty and property, to free speech, a public press, freedom

of worship and assembly and alternative basic rights might not be submitted to vote, they depend on the result of no elections.”³

CONSTITUTIONAL PROVISIONS FOR HEALTHY AND SAFE ENVIRONMENT:

Constitutional provisions to measure in healthy and pollution free setting in India: The Indian Constitution is reflects the human rights approach to environmental protection through varied constitutional mandates. In Asian nation the priority for setting protection has not solely been raised to the standing of organic law of land, however it's conjointly devoted with the right of each individual to measure in healthy and pollution free setting with full human dignity. The Constitution of Asian nation obligates the State yet as voters to protect and improve the setting. Throughout the last twenty years of last century , the Indian system notably within the field of environmental law, underwent a shift and new horizons of social justice were charted out.⁴ The Indian Constitution contains specific provisions for setting protection underneath the chapters of Directive Principles of State Policy and basic Duties. The absence of a selected provision within the Constitution to recognise the basic right to measure in clean and healthy setting has been set out by rendition. Article fourteen: the proper to equality is enshrined in Article 14 of the Constitution. The State shall not deny to someone equality before the law or the equal protection of the laws within the territory of Asian nation. the proper to equality could also be infringed by government decisions which can have dreadful impact on the setting, notably in cases, where permissions square measure absolute granted, as an instance, for construction, that square measure in distinction of development rules or for mining while not adequate appreciation of environmentally damaging consequences. Environmentally aware teams have resorted to require legal proceedings underneath Article fourteen to challenge the constitutional validity of the absolute official sanctions in such matters.⁵

Article 21: Article 21 protects the proper to life and liberty as basic rights. It states that nobody shall be empty his life or personal liberty except in line with procedure established by law. Enjoyment of life and its accomplishment as well as their right to life

³ Right to healthy and pollution free environment in the light of cases, Saeesh naik

⁴ Right to live in Healthy Environment - In framework of Indian Constitution Deepika Chouhan and Prabhash Dalei

⁵ The Right to Live In Healthy and Pollution Free Environment: A Perspective on Indian Constitution Suman Das

with human dignity encompasses inside its sphere; the protection and preservation of environment from pollution of air and water, sanitation is crucial while not that life cannot be enjoyed. Any contracts or actions would cause environmental pollution ought to be regarded as amounting to violation of Article twenty one. Therefore, sanitary setting could be a basic aspect of right to healthy life and it might be unfeasible to measure with human dignity without a benevolent and healthy setting. Environmental protection, therefore, has now become a matter of grave concern for human existence.⁶

Article 47: Article 47 of the Constitution is taken into account to be additional vital, because it imposes the first duty on the State to supply public with improved health, raised level of nutrition and ultimately improved normal of living. Public health will be assured to the public solely by giving the safe and guarded setting to measure in. This enabled the framers of our Constitution to be additional aware on the environmental concern.⁷

Article 48-A: Protection and improvement of setting and safeguarding of forests and wild life: The State shall endeavour to guard and improve the setting and to safeguard the forests and wild lifetime of the country.⁸

Article 51(A): The Constitution (Forty-Second Amendment) Act, 1976 additional a replacement half IV-A handling basic Duties within the Constitution of Asian nation. Article 51-A (g) specially deals with basic duty with reference to setting that it shall be the duty of every national of Asian nation to guard and improve the natural setting as well as forests, lakes, rivers and wildlife and to possess compassion for living creatures.⁹

OTHER LEGISLATION FOR HEALTHY AND SAFETY ENVIRONMENT:

The voters of the country have a basic right to a wholesome, clean and good atmosphere. The Constitution of Asian country, in terms of Article 48A, mandates that the State is underneath a Constitutional obligation to shield and improve the environment and to

⁶ DR. PANDEY J. N.; THE CONSTITUTIONAL LAW OF INDIA; 45TH EDITION; CENTRAL LAW AGENCY.

⁷ BHAT P. ISHWARA ; FUNDAMENTAL RIGHTS ; EASTERN LAW HOUSE; 2004.

⁸ JASWAL P. S. ; ENVIRONMENTAL LAW ; PIONEER PUBLICATION; SECOND EDITION 2003

⁹ DR. PANDEY J. N.; THE CONSTITUTIONAL LAW OF INDIA; 45TH EDITION; CENTRAL LAW AGENCY.

safeguard the forest and wildlife within the country. By forty second amendment to the Constitution, the Parliament, with Associate in Nursing object of sensitizing the voters of their duty, incorporated Article 51A within the Constitution, inter alia, requiring a subject to shield and improve the natural atmosphere together with the forests, lakes, rivers and wildlife and to have a compassion for living creatures. The legislative intent and spirit underneath Articles 48A and 51A(g) of the Constitution notice their place within the definition of 'environment' underneath the Environment (Protection) Act, 1986. The general assembly enacted numerous laws just like the Air (Prevention and management of Pollution) Act, 1981, Water (Prevention and management of Pollution) Act, 1974 and therefore the life (Protection) Act, 1972, the Forest (Conservation) Act, 1980, the Indian Forest Act, 1927 and therefore the Biological Diversity Act, 2002 and alternative legislations with the first object of giving wide dimensions to the laws about protection and improvement of atmosphere. It's true that half III of the Constitution relating to basic Rights doesn't specifically devote any Article to the atmosphere or protection thence in and of itself. However, with the event of law and say-so of judgments by the Supreme Court of Asian country, Article twenty one of the Constitution has been dilated to take inside its scope the correct to a clean and good atmosphere. The danger of potential harm to the atmosphere and human health ensuing from development ought to be considered by somewhat tilting the balance in favour of the atmosphere and within the larger public interest .¹⁰

RELEVANT CASE LAWS:

In present industrial development has created the matter of ecological imbalance everywhere the world. Industries generally and unsafe industries specially are movement a continuous threat to the surroundings. The Supreme Court of Asian country tried to evolve the correct of the folks to measure in healthy surroundings as a rider to balance the ecological imbalance. The issue concerning surroundings and ecological imbalance was invoked before the court for the primary time in R.L.& E. Kendra, Dehradun Vs. State of U.P. wherever the Court directed the closure of sedimentary rock quarries.¹¹

¹⁰ Sher Singh vs State Of Hp on 6 February, 2014. <https://indiankanoon.org/doc/194586080/>

¹¹ Baig, M. A. A. "Environment, Law and Justice". Daya Books, 1996

Olga Tellis & Ors Vs. city Municipal Corporation (1985): the correct to life warranted by Article twenty one includes the correct to living. In Olga Tellis v. city Municipal Corporation, a case brought by pavement dwellers to resist eviction from their environment by the BMC, the Supreme Court argued that the correct to living is born out of the correct to life as no one will live while not the suggests that of living.¹²

Kinkari Hindu deity Vs. State Justice (1988): Justice P.D. Desai remarked that there's each a constitutional pointer to the state and a constitutional duty of the voters not solely to guard but additionally to boost the surroundings and to preserve and safeguard the forest, the flora and fauna, the rivers and therefore the lakes and every one alternative water resources of the country. The neglect or failure to abide by the pointer or to perform the duty is nothing wanting betrayal of the fundamental law that the state and so the each Indian is absolute to uphold and maintain. nothing wanting betrayal of the fundamental law that the state and so the each Indian is absolute to uphold and maintain.

Subhash Kumar Vs. State of Bihar (1991): once more the apex court control that the correct to urge pollution free water and air could be

M C Mehta Vs. Union of Asian country (1992): The Supreme Court noted environmental pollution due to stone crushing activities in and around city, Faridabad and Ballabgarh complexes and aforementioned that each national has a right to contemporary air and to measure in pollution free surroundings. The Court issued directions to the stone quarries to prevent their activities in these areas and directed the govt. to rehabilitate them in crushing zone at intervals six months. M. C. Mehta Vs. Kamal Nath (1996): within the State of Himachal Pradesh, Span motel, owned by the members of the family of Shri Kamal Nath, Minister for surroundings and Forests, Govt. of India entertained the Course of watercourse Beas to beautify the tourist court and conjointly encroached upon some forest land. The apex court ordered the management of the Span tourist court at hand over forest land to the govt of Himachal Pradesh and take away all types of encroachments. The Court delivered a landmark judgment and established principle of indemnification for the first time in Bharat. The Court same that bad person should pay to reverse the injury caused by his act and obligatory a fine of Rs 10 Lakhs (Rs 10,00,000) on the Span tourist court as exemplary

¹² 1986 AIR 180, 1985 SCR Supl. (2) 51 <https://indiankanoon.org/doc/709776/>

damages. The Supreme Court of Bharat recognized bad person Pays Principle and Public Trust school of thought.¹³

SUGGESTION AND CONCLUSION:

Man has the elemental right to adequate conditions of life to measure in healthy and pollution free setting. In an setting of equality that allows a lifetime of dignity and well-being and bears a solemn responsibility to guard and improve the setting for gift and future generations. Connecting human rights and setting may be a necessary sourcebook that explores the unknown territory that lies between environmental and human rights legislation. The Constitution of Republic of India may be a comprehensive and well written Constitution containing elaborate provisions. Additionally the Water Act (1974 1988), Air Act (1981) and therefore the the } setting Protection Act (1986) also contain careful provisions for the protection of the setting. However, in spite of assorted provisions within the Constitution, legislative enactments and court's choices and watching, true is not encouraging because the laws aren't being enforced within the true spirit. The necessity of the hour is that there ought to be correct implementation of the laws for achieving property development by generating an environment of responsiveness. Moreover, consciousness of people regarding importance of environmental property isn't glad in Republic of India. The people of Republic of India is additionally not most privy to their constitutional rights and duties though Chipko Movement, Narmada Bachao Andolan, Silent natural depression movement are some signs of movement for healthy and pollution free setting. The govt. of Republic of India has launched numerous programmes and created use of audio visual media to teach the individuals and arouse their consciousness for the protection of setting.

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