

CONSTITUTIONAL OBLIGATIONS IN THE PROTECTION OF ENVIRONMENT

¹Arnold H T Sangma

¹ Student. 4th year Bba Llb(Hons), Saveetha School Of Law, Saveetha Institute Of Medical
And Technical Sciences, Saveetha University, Chennai- 77, Tamilnadu, India.

²R.Dhivya

² Assistant Professor, Saveetha School Of Law, Saveetha Institute Of Medical And Technical
Sciences, Saveetha University, Chennai- 77, Tamilnadu, India.

¹arosangma@gmail.com , ²divyar.ssl@saveetha.com

ABSTRACT:

In India, the environment has been protected since the ancient and medieval period. But there has been no proper legislation or provisions regarding the protection of environment until the year 1976, in the year 1986 the Environmental Protection Act was enacted. The Constitution was amended in the year 1976 which marks the forty second amendments to bring in provisions to protect the environment. The Article 48A and 51A was brought into live by the amendment. The Article 48A is for the Protection and Improvement of environment and safeguarding the forests and wildlife. The Article explains that 'it is the duty of the State to protect and improve the environment, the forests and wildlife of the country.' The Article 51A mentions that 'It shall be the duty of every citizen of India to protect and improve the natural environment including the forests, lakes, rivers and wildlife, and to have compassion for living creatures.' The Article 14, 19(1) (g) and 21 also plays a role in the protection of environment.

We have observed serious man made disasters to the environment in India where many lost their lives one such disaster are the Bhopal Gas Tragedy in the year 1984. Since then, the need for protection of the environment has become an important issue to concentrate on. The Constitution of India has provided many provisions regarding protection of environment to have a healthy and pollution free where it is the state and the individuals to conserve the natural environment of the nation but why do we have a high percentage of environmental degradation. India has to tackle a number of problems such as population, scarcity of proper food and water, health facilities and poverty. India has one of the largest populations of slums and if you observe the slum areas you will see a very bad environmental atmosphere. We will also be dealing with a number of cases in this paper such as M.C. Mehta v. Union of India and various other environmental disasters like the Ganga river pollution case.

KEYWORDS: Constitutional obligations, environment, Article, pollution, disaster.

RESEARCH QUESTION: Whether the environment in India is protected in a well manner by the Provisions provided under the Constitution of India, 1950.

INTRODUCTION:

In India, the concern for environmental protection has not only been raised to the status of fundamental law of the land, but it is also wedded with human rights approach and it is now well established that, it is the basic human right of every individual to live in pollution free environment with full human dignity. In view of the various constitutional provisions and other statutory provisions contained in various laws relating to environment protection, the Supreme Court has held that the essential feature of “sustainable development” such as the “precautionary principle” and the “polluter pays principle” are part of the environmental law of the country.

When our constitution was drafted it did not contain any specific provisions on environment and even the word “Environment” did not find a place in the constitution; there are certain provisions which to great extent had direct bearing on the environment such as improvement of public health, organization of agricultural and animal husbandry on modern and scientific lines and protection of natural monuments from spoliation, disfigurement.

Aim of the study:

To observe the Constitutional Provisions on environmental protection, To compare the provisions on Environmental Protection Act, 1986, To find a method in bringing in an effective mode of environmental preservation, To study the case laws regarding Environmental Law, To observe whether the constitutional remedy is effective enough or not.

RESEARCH METHODOLOGY:

The research methodology adopted by the researcher is a doctrinal form and the author has referred secondary sources in doing the research analysis.

HYPOTHESIS:

H0: Even though the Constitution of India has provided various provisions for environmental protection there is still environmental degradation in India.

Ha: The Constitution of India, 1950 has imposed an obligation to protect the natural environment and various remedies to resolve environmental problems.

HISTORY OF ENVIRONMENTAL LAW IN INDIA

The history of environmental law in India can be observed in four periods which we will be discussing in this chapter. The Ancient, Medieval, British and Post-Independence of India will be discussed on how the people preserved the environmental and what the kinds of practices they followed were.

During the Ancient Indian Period:

In the Hindu dogma forests, wildlife, trees were held to be in high esteem and given high respect.³ A detailed description of trees, plants and wildlife and their importance to people was given in Vedas, Puranas and Upanishads.(Guha 2011)

The 'Rig Veda' has mentioned in some of its principles on nature in observing the climate, the increase in fertility and the improvement of human life dwelling on the connection with nature. The 'Atharva Veda' considered trees as sacred groves of many gods

³ <https://www.indianbarassociation.org/wp-content/uploads/2013/02/environmental-law-article.pdf>

and goddesses. The 'Yajur Veda' affirmed that humans should not dominate nature and animals but they should learn how to live with connection by mutual respect and kindness towards them. The Hindu society was aware of the consequences of deforestation and hunting of animals would lead to effect in the environment. The 'Yajnavalkya Smriti' prohibited cutting of trees and imposed a penalty. Many instructions for the use and maintenance of water were given in 'Charak Samhita'.⁴ There also existed a relationship of mutual respect and kindness between Animals and humans. Ancient Hindu Scriptures strictly prohibited the killing of birds and animals. In 'Yajur Veda' it stated that no person should kill animals, but being helpful to all and by serving them, should obtain happiness.(Guha 2011)

We could observe even during the Civilization of Mohenjo Daro Harappa, the Hindus who were a small population protected the environment by maintaining harmony with the environment.⁵

The Mauryan period marked the most important chapter in the Indian History regarding environment protection. Kautilya's Arthashastra for the first time in the Indian History gave a detailed legal perspective provision on environmental protection. The Arthashastra concentrated on the administration of forest which maintained forest and protected wildlife.⁶ Under this legal provision various punishments were prescribed for cutting trees, damaging forests, and for killing animals etc. Wildlife in sanctuaries enjoyed complete protection from being killed except when they turn harmful. There were also punishments prescribed for causing of pollution and uncivil sanitation.(Guha 2011)

During the Medieval Indian Period:

The Medieval Period marked the rule of the Moghul Empire which played a significant role in the conservation of the environment. During the rule of the Moghuls many majestic gardens, fruit orchards and green parks were placed round the palaces, central and provincial headquarters, public places and on river banks and valleys. They used these places to spend their holidays during summers or their leisure times.⁷

⁴http://shodhganga.inflibnet.ac.in/bitstream/10603/76685/9/09_chapter%202.pdf

⁵<http://www.legalservicesindia.com/article/1926/Environmental-Laws-and-Constitutional-Provisions-In-India.html>

⁶<http://harvardelr.com/2016/11/14/constitutions-the-environment-comparative-approaches-to-environmental-protection-and-the-struggle-to-translate-rights-into-enforcement/>

⁷<http://www.polity.org.za/article/environmental-right-in-terms-of-the-constitution-2018-02-14>

Besides the administrative officers of the empire the 'Mohtasib' were empowered with the duty of prevention of pollution. The Mughal Empire was observed as great nature lovers but they did not do much to conserve the forest.⁸ To the Mughal emperors the forests were just wooded lands where they could hunt, for their governor's they were properties which generated revenue. A few species of trees enjoyed patronage and were called as 'royal trees' and had a restriction on being cut. However, there was no restriction in cutting of other trees. In the absence of any protective management, forests shrank during this period.⁹

The forest was treated as a source of income or useful resources for the empire. The freedom to use the forest's natural resources did not mean that they could be used or misused by one and all without any restraints. Rather the resources were quite effectively managed with the help of complex range of rules and regulations woven around the socio cultural and economic activities of the local communities.(Guha 2011)

During the British Raj in India:

The start of the British Rule in India started with the exploitation of the natural resources. There was no thought on the conservancy of forest. The British used the Indian forest resources to the extreme. The reason was for the demanding increase of military, British Navy, local construction and for export trade, etc.

In the year 1806 the British tried to control the forest by appointing a commission to look into whether teak wood were available in the Malabar and Travancore for conserving them but failed as wealth for the British was considered more important. In 1864 they appointed the first Inspector General of Forest. The duty of the forest department under the Inspector general was for exploring resources, demarcating reserves and protecting the forest.(Fisher 2017)

The British Government enacted the Forest Act, 1865 to have a monopoly right over the forest. The act empowered the forest administration by reserving forest close to people and imposes penalties for those who did not abide by the provisions of the Act. On 19th October 1884, the British Government declared its first Forest Policy with the following objectives:¹⁰

⁸https://www.gmu.edu/programs/icar/ijps/Vol17_2/DalyConstitutionalProtection.pdf

⁹ https://www.sahrc.org.za/home/21/files/Reports/3rd%20ESR%20Report%20chapter_9.pdf

¹⁰ https://www.sahrc.org.za/home/21/files/Reports/3rd%20ESR%20Report%20chapter_9.pdf

1. To promote the well being of the people in the country;
2. To preserve climatic and physical conditions in the country; and
3. To fulfil the needs of the people.

This policy also gave suggestions on classification of forest into various categories such as

1. The forests which were essential for preservation on climatic and physical grounds;
2. The forests which were of costly timber mainly for commercial purposes;
3. The minor forests which consisted inferior variety of timber; and
4. The forests which had no resourceful materials and were forests for namesake.(Fisher 2017; Saravanan 2008)

During the Post Independence period of India:

The post independence era witnessed a great deal of changes within the policies and attitudes of the Governments with relevancy environmental protection. The Constitution of Asian country came into force on twenty sixth Jan 1950, had few provisions relating to environmental management.¹¹

Article 39(b) provides that “it is the duty of the state to secure the possession and management of the fabric resources of the community are therefore distributed as best to sub serve the common good”.

Article 47 provides that “the State shall regard the rising of the extent of nutrition and also the commonplace of living of its individuals and also the improvement of public health as among its primary duties.”¹²

Article 48 directs that “the State shall endeavour to prepare agriculture and husbandry on fashionable and scientific lines and take steps for protective and up the breeds and prohibiting the slaughter of cows and calves and alternative sustenance and draught cows.”

Article 49 directs that “it shall be the duty of the State to safeguard each monument or places or object of inventive or historic interest, declared to be of national importance, from

¹¹ https://www.sahrc.org.za/home/21/files/Reports/3rd%20ESR%20Report%20chapter_9.pdf

¹² <https://www.lawctopus.com/academike/religious-freedom-environmental-protection/>

spoliation, disfigurement, destruction, removal, and disposal or export because the case could be”.

From the higher than articles, one will perceive that the COI wasn't environmentally blind, though the word setting wasn't expressly utilized in the Constitution; the thing of the higher than articles is to conserve the natural resources and to safeguard the natural setting. (Shanthakumar 2007)

Van Mahotsav, National competition of planting trees was adopted in 1950, with associate degree object to make mass awareness concerning the worth of forests in human well being. National Forest Policy was developed for the aim of correct management of forests of the country and to maximise the advantages of forests shaped within the year 1952.

The Pitambar Pant Committee on Human setting was got wind of to organize a report on the state of setting for illustration at the UN Conference on Human setting command at capital of Sweden in 1972.

The year 1972 was a landmark year within the history of Environmental Management in Asian country, as a result of the capital of Sweden conference was command in capital of Sweden. The views expressed within the conference influenced several policies in Asian country within the year 1972 on the advice of the Pitambar Pant committee, NCEPC (National committee on Environmental coming up with and coordination) was got wind of in Dept. of Science and technology to set up and coordinate setting all programs and policies and advise numerous ministries in matters regarding environment protection. In 1972, Wild life (protection) Act was enacted for defence of „wild animals, birds and plants and to stop the hunting; management interchange wild life product. In 1973, centrally sponsored theme “Project Tiger” was launched to make sure maintenance of population of tigers in Asian country.

In 1974, the Water (Prevention and management of Pollution) Act was passed for the aim of interference and management of water and for restoring quality of water. The Act additionally provides for Pollution management Boards. In 1976, the COI was amended by the forty second modification Act, 2 new articles were additional in

Part IV and half IV- A of the COI. The amendment has brought in Article 48A which directs the State that “it is the duty of the State to safeguard and improve the forests and wild of the country”. In 1980, The Tiwari Committee was shaped beneath the berth of Deputy

Chairman of the look Commission man. N.D. Tiwari. The report of this committee prompt variety of body and legal measures for environmental protection.

Based on its recommendations, the govt of Asian country got wind of a Department of setting with impact from All Saints' Day, 1980. In Apr 1981, National Committee on Environmental coming up with was established for making ready annual 'State of Environment' Report. The 80's witnessed the birth of the many eco-specific organisations like:¹³

1. Botanical Survey of Asian country in 1981,
2. The Air (Prevention and Control of pollution) Act in 1985,
3. The Department of Environment became a part of a replacement Ministry of setting and Forests.

In 1987, the Govt. developed the 'National Water Policy' with the thing to develop, conserve, utilize and manage the water resource because the water resource is scarce and precious and utmost national importance.¹⁴

In 1988, the 'National Forest Policy' was developed with the aim of guaranteeing environmental stability and maintenance of ecological balance.

In the year 1991-92, 'The Project Elephant' was launched aiming at guaranteeing long run survival of known viable population of elephants and try problematic elephant populations inflicting serious depredation. In 1995, the National Environment Tribunal Act was enacted to produce strict liability for damages emerging out of any accidents occurring whereas handling any venturous substance.¹⁵

In 2000, the Central Government by virtue of powers bestowed thereon by the setting (Protection) Act, 1986 created the subsequent rules;

1. The pollution (Regulation and Control) Rules, 2000;
2. gas Depleting Substances (Regulation and Control) Rules, 2000;

¹³ https://www.sahrc.org.za/home/21/files/Reports/3rd%20ESR%20Report%20chapter_9.pdf

¹⁴ <http://www.environmentmagazine.org/Archives/Back%20Issues/2012/July-August%202012/constitutional-rights-full.html>

¹⁵ <http://www.ecology.edu/environmental-policy.html>

3. The Municipal Solid Wastes (Management and Handling) Rules, 2000; and
4. Batteries (Management and Handling) Rules, 2001. except the higher than eco-specific legislations, realizing that there's no comprehensive legislation handling bio-diversity in Asian country, and to meet its international obligation beneath Convention on Biodiversity (CBD), the Govt. of Asian country has enacted the Biological Diversity Act 2002.(Shanthakumar 2007)

CONSTITUTIONAL PROVISIONS IN PROTECTION OF ENVIRONMENT IN INDIA

In India, the concern for environmental protection has not only been raised to the status of fundamental law of the land, but it is also wedded with human rights approach and it is now well established that, it is the basic human right of every individual to live in pollution free environment with full human dignity. In view of the various constitutional provisions and other statutory provisions contained in various laws relating to environment protection, the Supreme Court has held that the essential feature of “sustainable development” such as the “precautionary principle” and the “polluter pays principle” are part of the environmental law of the country.¹⁶

When our constitution was drafted it did not contain any specific provisions on environment and even the word “Environment” did not find a place in the constitution; there are certain provisions which to great extent had direct bearing on the environment such as improvement of public health, organization of agricultural and animal husbandry on modern and scientific lines and protection of natural monuments from spoliation, disfigurement etc.¹⁷

Preamble of the Constitution and Environmental Law:

The preamble of our Constitution provides that our country is based on “Socialistic” pattern of society, where the State pays more attention to the social problems than on any individual problems. Environmental pollution which has emerged as one of the biggest social

¹⁶ <http://www.greeklawdigest.gr/topics/physical-cultural-environment/item/93-the-constitutional-protection-of-the-environment>

¹⁷

https://researchspace.ukzn.ac.za/xmlui/bitstream/handle/10413/12290/Muir_Andrew_Robert_2014.pdf?sequence=1&isAllowed=y

problems is being regarded as a real problem affecting the society at large and thus state is under an obligation to fulfil the basic aim of socialism, that is, to provide decent standard of living to all which can be possible from a pollution free environment.¹⁸

The preamble further declares that, the great rights and freedoms which the people of India intended to secure all citizens include justice, social, economic and political. Justice also includes environmental justice. Although the particular word 'environment' does not find a place here, we can very well interpret this to include environmental justice. Environment as a subject matter has entered in our day to-day life in such a way that we cannot ignore deliberations on environmental matters when discussing about socio-economic or socio-political scene of the country.(Shanthakumar 2007; Shastri 2008)

Article 48A and 51A (1)(g):

The Indian Government enacted the 42nd Amendment of the Constitution bringing in an amendment in these articles to protect the environment. The amendment brought in the Article 48A and Article 51A (1) (g) in the Constitution of India concentrating on protection of the environment.¹⁹

Article 48A was associate addition to the Directive Principles of State Policy. It states that "the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country". The Article explains that it is the duty of the state to protect the natural environment and improve the environment by various methods of preservation in order to reduce the pollution already caused. It also mentions that it is the duty of the state to safeguard the forest and the wildlife surrounding the country.

Article 51A (1) (g) was a responsibility given to the citizens of India as an addition to the Fundamental Duties. It states, "To protect and improve the natural environment including forest, lakes, rivers and wildlife, and to have compassion for living creatures". The Article is similar to Article 48A but the only difference is the duty given is to the citizens of India as a Fundamental Duty.(Ojwang 1993)

In *L.K Kollwal V State of Rajasthan*, a straightforward writ petition by voters of Jaipur compelled the municipal authorities to produce adequate sanitation. The court observes

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https://researchspace.ukzn.ac.za/xmlui/bitstream/handle/10413/12290/Muir_Andrew_Robert_2014.pdf?sequence=1&isAllowed=y

¹⁹ https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2049&context=faculty_publications

that once each national owes a constitutional duty to safeguard the surroundings (Art.51A), the national should be conjointly 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 town, and laid-off the plea of lack of funds and employees.(Harrison 2005)

Article 246:

Article 246 of the Constitution divides the subject areas of legislation between the Union and the States. The Union List (List I) includes defence, foreign affairs, atomic energy, interstate transportation, shipping, air trafficking, oilfields, mines and inter-state rivers. The State List (List II) includes public health and sanitation, agriculture, water provides, irrigation and emptying, fisheries.²⁰ The Concurrent list (List III) (under that each State and also the Union will legislate) includes forests, protection of wildlife, mines and minerals and development not coated within the Union List, population control and factories. From an environmental stand, the allocation of legislative authority is a crucial one – some environmental drawback like sanitation and waste disposal, square measure best tackled at the native level; others, like pollution and wildlife protection, square measure higher regulated uniform national laws.(Ojwang 1993)

Article 253:

Art.253 of the Constitution empowers Parliament to create laws implementing India's international obligations furthermore as any call created at a global conference, association or alternative body. Art.253 states: nevertheless something within the preceding provision provisions of this chapter, Parliament has power to create any law for the complete or any a part of the territory of India for enacting any treaty, agreement or convention with the other country or countries. The Tiwari Committee in 1980 put forward an idea for a brand new entry on "environmental Protection" to be introduced within the concurrent list to be modified by the centre to enact on environmental subjects, as there was no direct entry in the 7th seventh enables Parliament to enact comprehensive environment laws. The recommendation, however, did to consider parliament's power under Art.253.

²⁰ <http://legaldesire.com/environmental-law-and-its-implementation-in-india-a-judicial-role-with-special-reference-to-crp-c/>

Article 14 and Article 19(1)(g):

Article 14 states: “It is the duty of the State to treat all person equal or equal protection before the law within the territory of India”. The right to equality may also be violated by government decisions having an impact on the environment. In order to prove the denial of the right to equality many environmental groups often seek to Article 14 to quash arbitrary municipal permission for construction that are violating the development regulations.

Article 21:

“Every person shall be given the right to life and personal liberty unless restricted by the law or conflicting the law.”

In *Maneka Gandhi v Union of India*, the Supreme Court while elucidating on the importance of the ‘right to life’ under Art. 21 held that the right to life is not confined to mere animal existence, but extends to the right to live with the basic human dignity (Bhagwati J.)

Similarly while interpreting Art.21 in *Ganga Pollution Case* as discussed before, Justice Singh justified the closure of polluting tanneries observed: “we are conscious that closure of tanneries may bring unemployment, loss of revenue, but life. Health and ecology have greater importance to the people.”(Shanthakumar 2007)

IMPACT OF THE CONSTITUTIONAL PROVISIONS ON ENVIRONMENTAL PROTECTION

The Constitution of India has brought in the Article 48A and 51A (1) (g) after the 42nd Amendment of the Constitution concentrating on environmental protection in India. Even after such amendments and implementations we can still observe that the state as well as the people bothers less on preservation of the environment. There is no strict implementation of the rules in regarding the preservation of environment. We are still a developing country and poverty prevails in many parts of the country. People are not educated regarding littering and preservation of environment. If the law implements strict punishment on those who pollute the environment there may be better reason to follow and preserve the environment. We will further discuss on the impact of the constitutional provisions on preservation of the environment by various case studies and methods or policies followed.

The Bhopal Gas Tragedy Case:

The Bhopal disaster has brought in many legal questions on the liability of parent firms for their acts of subordinates, the responsibilities of transnational companies indulged in unsafe activities, the transfer of unsafe technologies and also the applicable principles of liability. Bhopal was sacred issue for the judicial innovation within the space of evolving principles of company liability to be used of unsafe technology.²¹

On Dec three, 1984, highly unhealthy alkyl radical isocyanides (MIC), that had been factory-made and hold on in Union Carbide's manufacturer in Bhopal, free into the atmosphere and killed over three,500 folks and seriously livid concerning a pair of 100000 folks.

The Bhopal gas leak disaster (Processing of Claims) Act, 1985 was elapsed parliament to make sure that the claims arising out of the Bhopal disaster were proscribed chop-chop, effectively, equitably and to the simplest advantage of the claimants.(Nair 2005)

The Taj Mahal Case:

In Taj Mahal case (M C Mehta V. Union of india, AIR 1997, SC 734), the Supreme Court issued directions that coal and coke based mostly industries in Taj Trapezium (TTZ) that were damaging Taj ought to either modification over to gas or to be resettled outside TTZ. once more the Supreme Court directed to safeguard the plants planted around Taj by the Forest Department as under:

It is the duty of the Divisional Forest Officer to observe whether water is being provided to plants. The duty of the Union Government is to provide funds. Funding is also afterwards settled with the U.P. Government, however in any set of circumstances for need of funds the officer is directed to visualize that plants don't wither away.²²

The Court control that 292 industries set and operational in city should shift inside fastened time schedule to gas as industrial fuel or stop functioning with coke /coal and find resettled. The industries not applying for gas or resettled ar to prevent functioning with coke/coal from 30-04-97. The Shifting industries shall incline incentives in terms of the

²¹ <http://lawschool.unm.edu/students/organizations/els/constitution.html>

²² <http://www.lawnow.org/the-environment-and-aboriginal-rights/>

provisions of city program and conjointly the inducement usually extended to the new industrial units.

The integration of the international principles of environmental law into the Indian legal framework is a very important consequence of the emergence of Public Interest judicial proceeding within 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. In *M C Mehta v Union of India* the Supreme Court extends the principle of strict liability drawing from the *Rylands v Fletcher* case in English law to formulate a principle of absolute liability whereby an enterprise carrying out a hazardous activity is “absolutely liable” to compensate for any harm arising from such activity. The principle of strict liability in English common law states that “a person will be strict liable when he brings or accumulates on his land something likely to cause harm if it escapes, and damage arises as a natural consequence of its escape.” However, in formulating a principle of absolute liability, the Court contends that such liability is not subject to any of the exceptions under the rule in “*Rylands v Fletcher*.”(Leelakrishnan 2016)

M. C. Mehta v Union of India (The Ganga Water Pollution Case):

The homeowners of some tanneries close to Kanpur were discharging their effluents from their factories in Ganga while not putting in place primary treatment plants. The Supreme Court command that the monetary capability of the tanneries ought to be thought of as moot whereas requiring them to determine primary treatment plants. The Court under this case has directed to prevent the running of those tanneries and conjointly to not unfettered trade effluents from the tanneries either directly or indirectly into the stream Ganga while not subjecting the trade effluents to a permanent method by putting in place primary treatment.(Secretariat 1992)

M. C. Mehta v Union of India (Vehicular pollution case):

A matter concerning the transport pollution in Old Delhi town, within the context of Art forty seven and forty eight of the Constitution came up for thought in *M.C. Mehta vs. Union of Asian nation (Vehicular Pollution Case)*. It had been command to be the duty of the govt. to ascertain that the air didn't become contaminated thanks to transport pollution. The Apex court once more confirming the proper to healthy surroundings as a basic right

expressed that the proper to wash air additionally stemmed from Art twenty one that cited right to life. This case has served to be a significant landmark attributable to that leadless hydrocarbon offer was introduced in Old Delhi. There was a whole phasing out previous industrial vehicles quite five years previous as directed by the courts. Old Delhi owes its gift atmospheric condition to the try created to keep up clean air. (Fisher 2017)

Writs and PIL's for Environmental Protection:

A writ petition can be filed to the Supreme Court under Art.32 and the High Court under Art.226, in the case of a violation of a fundamental right. Since the right to a wholesome environment has been recognised as implied fundamental rights, the writ petitions are often restored to in environment cases. Generally, the writs of Mandamus, Certiorari and Prohibition are used in environmental matters. For instance, a Mandamus (a writ to command action by a public authority when an authority id vested with power and wrongfully refuses to exercise it) would lie against a municipality that fails to construct sewers and drains, clean street and clear garbage (Rampal v State of Rajasthan) likewise, a state pollution board is also compelled to require action against an trade discharging pollutants on the far side the permissible level. (Ojwang 1993)

The Precautionary Principle and the Polluters Pay Principle:

The "Precautionary Principle" establishes that a scarcity of data doesn't justify the absence of management measures. On the contrary, management measures ought to be established so as to keep up the conservation of the resources. The assumptions and strategies used for the determination of the scientific basis of the management ought to be conferred.²³

The essential ingredients of the precautionary principle are:

- (i) Environmental measures- by the regime and also the statutory authorities- should anticipate, forestall and attack the causes of surroundings degradation.
- (ii) Once there are threats of significant and irreversible injury, lack of scientific certainty mustn't be used as a reason for suspending live to forestall environmental degradation.

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https://www.researchgate.net/publication/311922823_CONSTITUTIONAL_PROVISIONS_AND_ENVIRONMENT_PROTECTION_IN_INDIA_A_LEGAL_INSIGHT

(iii) The “Onus of Proof” is on the actor or the developer/industrialist to point out that his action is environmentally benign.

(iv) Preventative duties should not solely be triggered by the suspicion of concrete danger however additionally by concern or risk potential.(O’Riordan 2013)

In M.C. Mehta v Union of India (CNG Vehicle Case):

The supreme court observed that any ‘auto-policy’ framed by the Government must, therefore, of necessity conform to the constitutional principles well as overriding statutory duties cast upon the government under the EPA. The car policy should adopt a ‘precautionary principles’ and create educated recommendations that balance the wants of transportation with the requirement to shield the surroundings.²⁴

The “polluter pays” principle happened within the 1970's once the importance of the surroundings and its protection was taken in world over. It was subsequently promoted by the Organization for Economic Cooperation and development (OECD). The ‘polluter pays’ principle as interpreted by the Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation.

In other words, Polluter should bear the cost of pollution as the polluter is responsible for pollution’. The principle demands that financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause pollution. It may be noted that the polluter pays principle evolved out of the rule of ‘absolute liability’ as laid down by the apex court in Sriram Gas Leak Case.(Furuyama and Yan 1998)

CONCLUSION:

In this paper we have observed that environment has been preserved since the ancient period of India. The 42nd Amendment of the Constitution has mainly concentrated on the protection of the environment. After the amendment the duty lies upon the state and the citizens to preserve and improve the environment. Connecting human rights and environment is a valuable sourcebook that explores the uncharted territory that lies between environmental

²⁴ <https://thinkprogress.org/green-amendment-movement-45a19f7c1ce7/>

and human rights legislation. Human beings will guarantee basic equality associate decreed adequate conditions of life in an surroundings that allows a lifetime of dignity and well-being.

There is associate degree imperative got to formulate laws keeping in mind the actual fact that people who begrime or destroy the natural surroundings don't seem to be simply committing against the law against nature, however square measure violating human rights furthermore. Indeed, health has looked as if it would be the topic that bridges gaps between the 2 fields of environmental protection and human rights. The advancement of the link between human rights associate degreeed surroundings would modify incorporation of human rights principles inside an environmental scope, admire antidiscrimination standards, the requirement for social participation and therefore the protection of vulnerable teams.

RECOMMENDATION:

Associating human rights and condition is an important sourcebook that investigates the unfamiliar region that lies amongst natural and human rights enactment. People can guarantee basic uniformity and satisfactory states of life in an condition that allows an existence of poise and prosperity. There is a pressing need to figure laws remembering the way that the individuals who dirty or crush the common habitat are not simply carrying out a wrongdoing against nature, but rather are abusing human rights also.

Without a doubt, wellbeing has appeared to be the subject that extensions holes between the two fields of natural security and human rights. The progression of the connection between human rights and condition would empower fuse of human rights standards inside an ecological degree, for example, anti discrimination principles, the requirement for social investment and the assurance of powerless gatherings.

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