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**ENVIRONMENTAL PROTECTION AND INDIAN CONSTITUTION**

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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<sup>3</sup> and protection of natural monuments from spoliation, disfigurement etc.

It was for the first time that Prime Minister Mrs. Indira Gandhi, in the first International Conference on Human Environment at Stockholm in 1972, voiced deep concern about the degradation of the environment and eco-imbalances. India was also one of the signatories of the Stockholm Declaration which is known as Magna Carta on human environment. Based upon the Stockholm conference, the Indian parliament passed the forty second amendment to the constitution in the year 1976 and incorporated specially two Articles relating to protection and improvement of environment where in the Constitution of India obligates the “State” as well as “Citizens” to “Protect and Improve” the environment.

***Environmental Protection and Preamble of the Constitution***

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 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.

The Preamble also declares India to be a “Democratic Republic”. In a democratic set up, people have the right to participate in government decisions. They also have the right to know and access to information of government policies which is very important for the success of the environment policies.

Environmental justice is also supported by the words of K.S. Dakshinamurthy that, “Environment as a subject, environment as a concern and environment as part of socio- economic-political structure in the country seems to have taken of. In fact it has entered the structure in such a way that no intellectual, political or academic discourse is complete without it.

### ***International Environmental Agreements and India’s Obligations***

The objectives of international environmental agreements would be effectively achieved if all relevant states become parties to them and rigorous implementation including monitoring of compliance was ensured. India is a contracting party or signatory to various international treaties and agreements relating to regional or global environmental issues<sup>20</sup>. India is under an obligation to translate the contents and decisions of International Conferences, treaties and agreements into the stream of national law. Article 253 of the Constitution specifically empowers the Parliament “to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body”.

The first consequence of the broad provisions on the environment protection in view of Article 253 read with Entries no. 13 and 14 of the Union List is that, the Parliament can pass any law on environment protection and the same cannot be questioned before the courts on the ground that the Parliament lacked legislative competence. Secondly, in India the Parliament has made use of this power to enact the Air (Prevention and Control of Pollution) Act of 1981 and the Environment (Protection) Act of 1986. The Preamble of these laws state that these Acts were enacted to implement the decisions reached at the United Nations Conference on Human Environment held at Stockholm in 1972.

In ***Vellore Citizens Welfare Forum v. Union of India*** the Supreme Court held that it is almost an accepted proposition of law that the rules of customary International Law which are not contrary to the Municipal Law shall be deemed to have been incorporated in the domestic law and shall be followed by the courts of law.

***Duties of the State and Citizen Towards Environmental Protection***

Article 47 of the Constitution which reads: “The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medical purposes of intoxicating drinks and drugs which are injurious to health”.

The basic principle embodied in the Article very clearly denies the statement to some of the learned authors that initially our Constitution was environmentally blind and environment as a subject has been left out of the Constitution. Article 47 calls upon the State to perform the basic duty to look after the health of the citizen and also take necessary and effective steps to improve their standard of living and also raise the level of nutrition. Therefore, taking into consideration, the Constitution very aptly recognized the right to health and casts a responsibility upon the State making it obligatory to work for improving the health of the citizens.

With the objective of affording better protection to the environment, the Constitution was amended in the year 1976 and a new Article 48-A was inserted into the Constitution which reads: “The State shall endeavour to protect and improve the environment and safeguard the forests and wild life of the country”. This Article used the word ‘Environment’ in a wider sense which affects all the living being and influences the conditions of their lives. Water and air are among such important factors which mould the life of the citizens. Article 48-A further provides “to safeguard the forests and wild life”. This is an important provision as the environment is greatly influenced by forests and wild life. In India, the judicial attitude in protecting and improving the environment provides a testimony of the fact that, directive principles are not mere “guiding principles” of policy but they have to be given effect to.

In ***T. Damodhar Rao. v. S. O Municipal Corporation***, Hyderabad the court pointed out that in view of Articles 48-A and 51-A(g), it is clear that protection of environment is not only the duty of every citizen but it is also the “obligation” of the State and all other State organs including courts. In ***M.C. Mehta v. Union of India*** the court observed that Articles-39(e), 47 and 48-A by themselves and collectively casts a duty on the State to secure the health of the people, improve public health and protect and improve environment. The cumulative effect of Articles 48-A and 51-A(g) appears to be that the ‘State’ as much as the ‘Citizens’ both are now under a constitutional obligation to conserve, preserve, protect and improve the environment.

***Environmental Protection and Fundamental Rights******Environmental protection and Right to life***

Article 21 of the Constitution which reads: “No person shall be deprived of his life or personal liberty except according to procedure established by Law”. The right to life as guaranteed by Article 21 of the Constitution is basic human right and the concept of right to life and personal liberty have been transformed into positive rights by active judicial interpretation. A new era ushered in the post Maneka period the concept of right to life witnessed new developments and new dimensions were added to the interpretation of fundamental rights embodied in Article 21.

This view of the Supreme Court was also reflected in ***Francis Carolie Mulhin v. Administrator Union Territory of Delhi*** where Justice Bhagawati observed that “the right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something more than just physical survival”.

Article 21 guarantees the right to life, a life of dignity, to be lived in a proper environment, free of danger of disease and infection. It is an essential fact that there exists a close link between life and environment. Right to life would become meaningless if there is no healthy environment.

The right to live in healthy environment as a part of Article 21 was evident from the case of ***Rural Litigation and Entitlement Kendra, Dehradun v. State of U.P.*** that the Rural Litigation and Entitlement Kendra, Dehradun and a group of citizens wrote to the Supreme Court against the progressive mining which denuded the Mussoori Hills of trees and forests cover and accelerated soil erosion resulting in landslides and blockage of underground water channels which fed many rivers and springs in the valley. The Court ordered the registry to treat this letter as writ petition under Article 32 of the Constitution. Initially the Court appointed an expert committee to advise the bench on technical issues. On the basis of the report of the committee, the Court ordered the closure of the lime- stone quarries.

The Court observed: “This is the first case of its kind in the country involving issues relating to environment and ecological balance and the questions arising for consideration are of great moment and significance not only to the people residing in the Missouri Hill range but also in their implications to the welfare of the generality of people, living in the country”. It is also stated that, the disturbance of ecology and pollution of water, air and environment by reason of quarrying operation definitely affects the life of the person and thus involves the violation of right to life and personal liberty under Article-21 of the Constitution.

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In ***M.C. Mehta v. Union of India*** the Supreme Court once again impliedly treated the right to live in pollution-free environment as a part of fundamental right to life under Article-21 of the Constitution.

In ***L.K. Koolwal v. State Rajasthan High Court*** held that the Maintenance of health, preservation of the sanitation and environment falls within the purview of Article 21 of the Constitution as it adversely affects the life of the citizen and it amounts to slow poisoning and reducing the life of the citizen because of the hazards created, if not checked.

In ***Indian Council for Enviro-Legal Action v. Union of India*** (popularly known as H-Acid Case) a public interest litigation was filed by an environmentalist organization, against the Union of India, State Government and State Pollution Board concerned to compel them to perform their statutory duties on the ground that their failure to carry on such duties violated rights guaranteed under Article 21 of the residents of the affected area.

Thus from the perusal of all above mentioned cases it is evident that there has been a new development in India and right to live in a healthy and pollution free environment is considered as the fundamental right under Article 21, without this, right to life and livelihood would become meaningless and it is evident that the judiciary has certainly prevented the flagrant violation of the right to safe environment.

### ***Environment and Right to Equality***

The Indian Constitution guarantees 'right to equality' to all persons without any discrimination. This indicates that any action of the 'State' relating to environment must not infringe upon the right to equality as mentioned in the Article 14 of the Constitution. The Stockholm Declaration, 1972, also recognized this principle of equality in environmental management and it called up all the worlds' nations to abide by this principle. The judiciary, on various occasions, have struck down the arbitrary official sanction in environmental matters on the basis that it was violative of Article-14 . The right to equality is generally resorted to in urban development where permission for construction is granted by the authorities arbitrarily under its discretionary powers without evaluating the public interest and without application of mind and considering the environmental impacts.

In ***Bangalore Medical Trust v. B.S Muddappa*** the Supreme Court prevented an attempt to convert a public park site into nursing home. It was held that the decision taken at the instance of the Chief Minister of the State to convert an open space reserved for public park into a site for constructing

hospital and to allot the site to a private person was vitiated by non application of mind and was arbitrary, hence ultra vires and violation of Article 14 of the Constitution.

In ***State of Himachal Pradesh v. Ganesh Wood Products*** the Supreme Court held that a decision making authority must give due weight and regard to ecological factors such as the environmental policy of the government and the sustainable use of natural resources. A government decision that fails to take into account relevant consideration affecting the environment is invalid. The Court also used Article 14 to justify the Government policy in certain cases.

In ***Kholamuhana Primary Fisherman Cooperative Society v. State the government*** had framed a policy regarding fishing in Chilka Lake so as to protect the traditional rights of fisherman. The Court held that the said policy was neither arbitrary nor ambiguous and hence not violative of Article 14 of the Constitution. Further the Court pointed out that adoption of extensive and intensive prawn culture to earn “prawn dollars” in disregard to ecology was not proper.

Article 14 can also be invoked to challenge the government action where permission for mining and other activities with high environmental impact is granted arbitrarily.

### ***Freedom of Speech and Expression and Environment***

Article 19(1) (a) guarantees every citizen a fundamental freedom of speech and expression. In India most of the environmental jurisprudence has developed by judicial activism. Most of the cases came before the Court as a result of public interest litigations (PILs) in which the people exercised their freedom of speech and expression sometimes by writing letters to the court or otherwise by filing petitions before it, highlighting the violation of the rights of the people to live in healthy environment in one way or the other.

In ***P.A.Jacob v. The Superintendent of Police, Kottayam*** the Kerala High Court held that freedom of speech under Article 19 (1) (a) does not include freedom to use loud speakers or sound amplifiers. Thus noise pollution caused by the loudspeakers can be controlled under Article 19(1) (a) of the Constitution

In ***Moulana Syed Md. Noorur Rehman Barkati v. State of West Bengal*** the Calcutta High Court observed that excessive noise is certainly pollution in the society. Under Article 19(1) (a) read with Article 21 of the Constitution of India, the citizens have a right of decent environment and they have a right to live peacefully, right to sleep at night and to have right to leisure which all are necessary ingredients of the right to life guaranteed under Article 21 of the Constitution. There are various other

sources where the noise is created or generated but which offends citizen's right guaranteed under Articles 19(1) (a) and 21 of the Constitution.

Freedom of Trade and Commerce and Environment Article 19(1) (g) guarantees all citizens the right "to practice any profession or to carry on any occupation, trade or business". This right of the citizens is not absolute. It is subject to Article 19(6) under which "reasonable restrictions" in the "interest of the general public" can be imposed. Thus, environmental interest from the hazards of any trade or business can be protected.

In ***M.C. Mehta v. Union of India*** the Supreme Court directed that certain industries which were not showing any progress regarding the installation of the air pollution controlling system in compliance with the Supreme Courts earlier order, should be closed. In this case the Supreme Court did not refer Article 19 (1) (g) however it is implied that while passing the order it had in its mind Article 19 (1) (g) read with Article 19 (6) and 21 of the Constitution.

In ***M.C. Mehta v. Union of India*** where tanneries were discharging effluents from their factories in the holy river Ganga resulting in water pollution and not setting up a primary treatment plant in spite of being asked to do for several years. It was held that, an order directing them to stop working their tanneries should be passed as effluent discharge from tanneries is ten times noxious when compared with the domestic sewage water which flow in to the river and the court passed the following order: "We are, therefore, issuing the directions for the closure of those tanneries which have failed to take minimum steps required for the primary treatment of industrial effluent. We are conscious that closure of tanneries may bring unemployment, loss of revenue, but life, health and ecology have greater importance to the people".

### **Conclusion**

The elaborated study of the constitutional provisions and the related cases, demonstrates the active role of the Supreme Court and the High Courts. In fact, during the last decade, the court has exhibited its legal scholarship in the development of environmental jurisprudence. The role of higher judiciary as is witnessed from majority of the cases decided by it has been worth appreciating. The Court has successfully done its job, fulfilled its obligation and performed its duty. The ***Ratlam Municipality Case, Delhi Gas Leakage Case, the Ganga Pollution Cases, Dehradun Quarrying Case, Calcutta Taj Hotel Case*** are some of the examples where the Court, not only by liberalizing the traditional rule of locus-standi but has evolved the concept of public interest litigation It is our submission, that judiciary is not the only

effective form to resolve environmental problem which can be effectively solved only through public awareness and political will rather than judicial will. Thus, judiciary can and does play a role of catalyst and thereby speed up and gear up the process, but it has to be initiated by and from the public.

Further, the environmental issues are complex and need to dwell on points of scientific and technical relevance. The Courts in such situations find it difficult to form its own independent opinion and take recourse to the help of expert committees which is a long and time consuming exercise. In order to overcome such difficulties it is submitted that the suggestion made by the Supreme Court in the Delhi Gas Leakage Case for the setting up of environmental courts for speedy disposal of environmental cases, if implemented will a right step in the right direction. Accordingly, there is an urgent need that citizens as well as the State must sit up and take notice of environmental degradation and take appropriate steps to improve it.

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