



THE PROTECTION OF ENVIRONMENT UNDER CONSTITUTIONAL PROVISIONS WITH JUDICIAL APPROACH

Dr. Shivanand H Lengati*
Ph.D., D.Litt. (America)

*Principal, Vijnaneshwara Government Law College, Kalaburagi, Karnataka State, India

Abstract:

This paper commences with the meaning and need for environmental laws. It also analyzes the judicial remedies available for environmental protection and some remarkable principles and doctrine propounded by the Indian judiciary. It further views upon the constitutional aspects and the new trends in judicial approach in environmental protection. The proposed study will lead to a more descriptive and comprehensive understanding of the environment law and the policy along with the role of Supreme in today's context to the new emerging threat which need to be combat effectively. The main objective behind this research is to identify the present scenario and study the nature and extent of till date developments in various environmental statuses through various statutes, law and convention and various issues regarding the court decisions and judicial process.

Key words: Environmental Law, Environmental Justice, Constitutional Law, Indian Constitution,

Introduction

The Preamble also aims to achieve Justice - Social, Economic and Political. A nation where rich and influential pollute the environment by uncontrolled and rampant industrialization and unregulated, unhindered and illegal mining without caring for the environment causing irreparable loss to the ecology and people cannot be said to be a nation having welfare state and providing social and economic justice. Hence, the Preamble not only talks about socialistic pattern but also that there shall be economic, political and social justice. Thus, though the Preamble does not expressly deal with environment yet the language of Preamble is wide enough to cover environment protection and clean environment as implicit therein.

Though Words "Secular and Socialist" were added later on to the Constitution by 42nd Amendment yet the Constitution had secular as well as socialist fabric right from its inception. Various provisions in the Constitution deal with the socialist and secular fabric of the nation in particular Part IV lays down emphasis on Socialistic pattern of governance and Part III spells out the secular fabric of the country. Word Socialist in the Indian Constitution read in conjunction with Part IV of the Indian Constitution points out that the Constitution adopted welfare government on socialistic pattern whose prime aim was welfare of people. Social welfare is not possible if the people are forced to live in unclean environment which jeopardise their health and lives. The use of words "Democratic Republic" further brings the point home that the

government is to work for the welfare of the masses and that the people have right in participate in government process. This implies that government shall seek to provide, apart from other things, a clean environment suitable for human abode.

The history of legislative started with Indian Penal Code, 1860. Section 268 defined what is public nuisance. Abatement of public nuisance is also a subject of Section 133 to 144 of I.P.C. These are only prohibitive provisions. Sections 269 to 278 of the Indian Penal Code are penal provisions which means that a person guilty of violating any of the provisions is liable to prosecution and punishment.

Legislative fight against pollution continued in independent India. Now there is a host of legislation in India aimed at protecting the environment from pollution and maintaining the ecological balance. The Environment (Protection) Act, 1986 is one major Act for environmental protection. The Government of India has launched various programmes and made use of audiovisual media to educate the people and arouse their consciousness for the protection of environment.

Constitution of India is a dynamic instrument which echoes the values, aspirations and the ideals of our freedom movement. Constitutional provisions strive for having clean environment and it is reflected in Constitutional provisions as interpreted by the higher judiciary.

It claimed: (i) It is fundamental human right to live in an unpolluted environment. (ii) It is fundamental duty of every individual to maintain purity of environment.

Soon after the Stockholm Conference, many Acts were introduced i.e. Wildlife Act, 1972; Water Act, 1974; Air Act, 1981 etc. Within five years of Stockholm Declaration, the Constitution of India was amended to include Protection and Improvement of Environment as constitutional mandate. The protection and improvement of environment is now a fundamental duty under Constitution Act of 1976. Govt., of India has set up a National Committee on Environmental Planning and Coordination.

Government of India's programme for environment included the programme for cleaning the rivers including Ganga and Yamuna. Prime Minister, Sh. Rajiv Gandhi constituted Central Ganga Authority for the purpose of pollution control of Ganga. The enactment of Environment (Protection) Act, 1986 was the immediate off-shoot, of this programme.

The Supreme Court (writ petition (Civil) No. 860 of 1991) has directed the University Grants Commission to prescribe a course on 'Man and Environment'. In the light of this directive, the UGC issued a circular to various universities to introduce the course on 'Environmental Education'.

The main attention in the education on environment is as below:

- Over-population and the ways to check its rapid growth.
- A forestation as a preventive to soil erosion and water pollution
- Methods to prevent air pollution, insisting on smokeless cooking
- Discipline in playing radio and television sets and a ban on use of loudspeaker.
- Elementary knowledge of the scientific and philosophical basis of man and the environment
- Rules regarding disposal of household waste; and (vii) General principles of sanitation.

Environment and Constitution of India:

The Preamble to the Indian Constitution which starts with “We the People” sets out the goals and objectives of the Constitution. It declares India to be a Sovereign Socialist Secular Democratic Republic. It has been declared to be a key to open the mind of constitution makers.¹

The protect and improve the environment is a constitutional mandate. It is a commitment for a country wedded to the ideas of a welfare State. The Indian Constitution contains specific provisions for environment protection under the chapters of Directive Principles of State Policy and Fundamental Duties. The absence of a specific provision in the Constitution recognizing the fundamental right to clean and wholesome environment has been set off by judicial activism in the recent times.

Articles 48-A and 51-A. Clause (g):

Initially, the Constitution of India had no direct provision for environmental protection. Global consciousness for the protection of environment in the seventies, Stockholm Conference and increasing awareness of the environmental crisis prompted the Indian Government to enact 42nd Amendment to the Constitution in 1976. The Constitution was amended to introduce direct provisions for protection of environment. This 42nd Amendment added Article 48-A to the Directive Principles of State Policy.

Article 49-A:

The Article states: “The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.” The said amendment imposed a responsibility on every citizen in the form of Fundamental Duty.

Article 51-A, Clause (g):

Article 51-A (g) which deals with Fundamental Duties of the citizens states: “It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.” Thus, protection and improvement of natural environment is the duty of the State (Article 48-A) and every citizen (Article 51- A (g)).

Article 253: Article 253 states that ‘Parliament has power to make any law for the whole or any part of the country for implementing any treaty, agreement or convention with any other country. In simple words this Article suggests that in the wake of Stockholm Conference of 1972, Parliament has the power to legislate on all matters linked to the preservation of natural environment. Parliament’s use of Article 253 to enact Air Act and Environment Act confirms this view. These Acts were enacted to implement the decisions reached at Stockholm Conference.

Environment and Citizens:

The Constitution of India has made a double provision: (i) A directive to the State for protection and improvement of environment. (ii) Imposing on every citizen in the form of fundamental duty to help in the preservation of natural environment. This is the testimony of Government’s awareness of a problem of worldwide concern. Since protection of environment is now a fundamental duty of every citizen, it is natural that every individual should do it as personal obligation, merely by regulating the mode of his natural life. The citizen has simply to develop a habitual love for pollution.

¹ Re Berubari Union, AIR 1960 SC 845

The Constitutional provisions

In Ratlam Municipality v. Vardhi Chand² supreme court ordered the closure of limestone quarries in Dehra Dun-Mussoorie Area. It realised that the closure of limestone quarries would cause financial hardships but the court observed that it is the price that has to be paid for protecting and safeguarding the right of the people to live in a healthy environment with minimal disturbance of ecological balance, and without avoidable hazard to them and to their cattle, homes and agricultural land and undue affection of air, water and environment.

In Subash Kumar v. State of Bihar³, it was held that right to live is a fundamental right under Article 21 of the constitution and it includes the right to enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has a right to have recourse to Article 32 of the constitution for removing the pollution of water or air which may be detrimental to the quality of life.

In Vellore Citizens Welfare Forum v. Union of India⁴, the petition was directed against the pollution caused by enormous discharge of untreated effluent by the tanneries and other industries in the State of Tamil Nadu. It was argued that untreated effluents discharged by tanneries in the State of Tamil Nadu have polluted the main water supply source and the ground water. The petitioner argued that the ground water near these tanneries have been so polluted that it has become unsuitable for drinking,

large pieces of agricultural land had been turned into barren land and the productivity of large area of land has been reduced considerably. The court discussed Precautionary Principle and concluded that right against environmental pollution is implicit in right to life enshrined in Article 21 of the constitution. After having so concluded, the court proceeded to direct the closure of industries which are not complying with the directions of the Pollution Control Board and NEERI.

Similarly in ***M.C. Mehta v. Union of India***⁵ where a petition was filed for preventing the degradation of the Taj Mahal due to pollution caused by coal using industries via Trapezium, the Apex Court issued directions to 292 industries located in Agra to change over within a time schedule to Natural Gas as industrial fuel or stop functioning with coal/coke and to apply for relocation or otherwise stop functioning w.e.f. 30-04-1997 on account of violation of Articles 21, 48A, 51A and 47 of the Constitution.

In M.C. Mehta v. Kamal Nath⁶ it was contended by the petitioner that if a person disturbs the ecological balance and tinkers with the natural conditions of rivers, forests, air and water, which are the gifts of nature, he will be violating the fundamental right guaranteed under Article 21 of the Constitution. Supreme Court accepted the contention of the petitioner and held that any disturbance of basic environment elements namely air, water, soil which are necessary for "life" would be hazardous to "life" within the meaning of Article 21 of the constitution. The court after holding it to be a violation of article 21 proceeded to observe that in these cases polluter pays principle and principle of Public Trust Doctrine applies.

In M.C. Mehta v. Union of India⁷ with a view to safeguard the countrymen from the vices of air pollution, the Supreme Court refused to grant blanket extension of dead line for conversion of vehicles to CNG. It is pertinent to mention here

² AIR 1980 SC 1622

³ AIR 1991 SC 420

⁴ AIR 1996 SC 2715

⁵ AIR 1997 SC 734

⁶ AIR 2000 SC 1997

⁷ AIR 2001 SC 1948

that the Supreme Court vide its order dated 28th July 1998⁸ issued guidelines to convert vehicles to CNG in a reasonable time schedule.

*In N.D. Jayal v. Union of India*⁹ the Supreme Court again reiterated that right to clean environment is implicit in right to life and personal liberty guaranteed under Article 21. Again, in *Municipal*

*Corporation of Greater Mumbai Vs Kohinoor CTNL Infrastructure Co. (P) Ltd.*¹⁰, the Apex court laid down that right to live in clean and healthy environment is part of right to life and personal liberty guaranteed under Article 21. The court went on to hold that this right is also part of common law jurisprudence.

ARTICLE 21

Article 21 of the constitution of India provides for the right to life and personal liberty. It states that “no person shall be deprived of his life or personal liberty except according to procedure established by law.” In *Rural Litigation and Entitlement*.

Kendra Vs State of UP, also known as the Dehradun quarrying case, the Supreme Court of India has held that pollution caused by quarries adversely affects the health and safety of people and hence, the same should be stopped as being violative of Article 21. In this case, the Supreme Court for the first time held that the right to wholesome environment is a part of right to life and personal liberty guaranteed under Article 21 of the Constitution.

Further, in the case of *Subhash Kumar Vs. State of Bihar*, again the apex court held that the right to get pollution free water and air is a fundamental right under Article 21. Following this decision, the right to pollution free environment was incorporated under the head of right to life and all the law courts within the Indian territory were bound to follow the same. This laid down the foundation of environmental litigation in India.

Similarly, public health and ecology³ were held to be the priorities under Article 21 and the constitution of a green bench was also ordered by the Supreme Court.

In the case of *Ratlam Municipality Vs Vardicharan*, where the problem of pollution was due to private polluters and haphazard town planning, it was held by the Supreme Court that pollution free environment is an integral part of right to life under Article 21.

Directive Principles of State Policy Article 48(A)

48A. Protection and improvement of environment and safeguarding of forests and wild life The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

Sher Singh vs State Of Hp on 6 February, 2014

The citizens of the country have a fundamental right to a wholesome, clean and decent environment. The Constitution of India, in terms of Article 48A, mandates that the State is under a Constitutional obligation to protect and improve the environment and to safeguard the forest and wild life in the country. By 42nd Amendment to the Constitution, the

⁸ M.C. Mehta v. Union of India AIR 1998 SC 2963

⁹ (2004) 9 SCC 362

¹⁰ (2014) 4 SCC 538

Parliament, with an object of sensitizing the citizens of their duty, incorporated Article 51A in the Constitution, inter alia, requiring a citizen to protect and improve the natural environment including the forests, lakes, rivers and wild life and to have a compassion for living creatures. The legislative intent and spirit under Articles 48A and 51A(g) of the Constitution find their place in the definition of 'environment' under the Environment (Protection) Act, 1986 (for short the 'Act of 1986'). The legislature enacted various laws like the Air (Prevention and Control of Pollution) Act, 1981, Water (Prevention and Control of Pollution) Act, 1974 and the Wildlife (Protection) Act, 1972, the Forest (Conservation) Act, 1980, the Indian Forest Act, 1927 and the Biological Diversity Act, 2002 and other legislations with the primary object of giving wide dimensions to the laws relating to protection and improvement of environment. It is true that Part III of the Constitution relating to Fundamental Rights does not specifically devote any Article to the Environment or protection thereof per se. However, with the development of law and pronouncement of judgments by the Supreme Court of India, Article 21 of the Constitution has been expanded to take within its ambit the right to a clean and decent environment.

Not only this, there is still a greater obligation upon the Centre, State and the Shrine Board in terms of Article 48A of the Constitution where it is required to protect and improve the environment. Article 25(2) of the UDHR ensures right to standard of adequate living for health and well-being of an individual including housing and medical care and the right to security in the event of sickness, disability etc. The expression 'life' enshrined in Article 21 of the Constitution does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of living, hygienic conditions in the workplace and leisure. The right to life with human dignity encompasses within its fold, some of the finer facets of human civilization which makes life worth living. The expanded connotation of life would mean the tradition and cultural heritage of the persons concerned. In the case of Consumer Education & Research Centre (supra),

The Court discussing the **case of C.E.S.C. Ltd. Vs Subhash Chandra Bose**¹¹ stated with approval that in that case the Court had considered the gamut of operational efficacy of human rights and constitutional rights, the right to medical aid and health and held the right to social justice as a fundamental right. The Court further stated that the facilities for medical care and health to prevent sickness, ensure stable manpower for economic development and generate devotion to duty and dedication to give the workers' best performance, physically as well as mentally. The Court particularly, while referring to the workmen made reference to Articles 21, 39(e), 41, 43 and 48-A of the Constitution of India to substantiate that social security, just and humane conditions of work and leisure to workmen are part of his meaningful right to life.

Small Hydro Power Developers' Vs Transmission Corporation of A.P. on 8 May, 2008.

The said decision itself is an authority for the proposition that what is granted can be withdrawn by the Government except in the case where the doctrine of promissory estoppel applies. The said decision is also an authority for the proposition that the promissory estoppel operates on equity and public interest.

Thus, the State has discretion to alter its policy. The courts cannot interfere with the policy decision unless it is found that the decision to change the policy is arbitrary, unreasonable and unfair. In the instant case, the State Government has not changed or withdrawn its policy of incentivizing the generation through renewable sources of energy. The policy directives contained in GOMs are also not inconsistent with the expressed or implied provisions of any statute. Rather the policy is in conformity with the preamble to the Electricity Act, 2003 and Article 48A of the Constitution.

As seen from above the thrust of the National Electricity Policy is upon the use of nonconventional sources of energy to augment generation and for production of green energy. In fact the electricity policy as also the MNES policy, the

¹¹ (1992) 1 SCC 441

preamble to the Electricity Act, 2003 and Section 61(h) thereof and GOMS 93 are in tune with the provisions of Article 48A and 51A (g) of the Constitution and treaties, conventions and protocols on the issues relating to environment.

In order to support conservation of environment, Constitution was amended by 42nd Amendment Act, 1976. By virtue of the amendment, Articles 48A and Article 51A (g) were inserted in the Constitution. Article 48A, inter alia, provides that the State shall endeavour to protect and improve the environment. Similarly Article 51A(g), inter alia, casts a duty on every citizen of India to protect and improve the natural environment. Articles 48A, Article 51 A(g), the Preamble to the Electricity Act, National Electricity Policy, MNES policy and GOMS 93 reflect the concern for ecology. This concern stems from the ill effects of pollution and global warming. Since the environment needs to be protected, adequate and pre-empting measures are required to be taken to incentivize the generation of power through renewable sources of energy. But in case the original PPAs are re-opened for fixing higher wheeling charges than what is provided in the G.O.Ms. No. 93, there is bound to be a set back to the generation of power through renewable sources of energy.

The hike in the wheeling charges of power generated by plants based on renewable sources of energy does not serve the purpose of promotion of power generation through non- conventional sources. Setting up of power plant requires heavy investment and it has a long gestation period. It is also well known that till the technologies are improved, the cost of production of power through renewable sources of energy could be higher than the production of power through conventional sources of energy. The impugned increase in wheeling charges of energy produced by renewable sources is against the preamble and Sections 61(h) of the Electricity Act, the National Electricity Policy, GOMs 93 & 112 of the Government of Andhra Pradesh, MNES policy and thrust of Article 48A of the Constitution.

In Chhattisgarh *Biomass Energy Developers Association and Ors. Vs Chhattisgarh S.E.R.C. and Ors.*¹², it was observed that where Power Purchase Agreements between distribution licensees and the generating companies utilizing renewable sources of energy are in conformity with MNES guidelines or various policy guidelines, the agreements are not to be tinkered with.

The Commission has not considered the impact of the aforesaid decisions, the preamble and Section 61(h) of the Electricity Act, 2003, the National Electricity Policy, MNES guidelines, Article 48A and 51A(g) of the Constitution and the aspect relating to protection of environment, which has been the subject matter of various treaties and conventions.

State of Gujarat Vs Mirzapur Moti Kureshi Kassab on 26 October, 2005 By enacting clause (g) in Article 51-A and giving it the status of a fundamental duty, one of the objects sought to be achieved by the Parliament is to ensure that the spirit and message of Articles 48 and 48A is honoured as a fundamental duty of every citizen. The Parliament availed the opportunity provided by the Constitution (Forty-second Amendment) Act, 1976 to improve the manifestation of objects contained in Article 48 and 48-A. While Article 48-A speaks of "environment", Article 51-A(g) employs the expression "the natural environment" and includes therein "forests, lakes, rivers and wild life". While Article 48 provides for "cows and calves and other milch and draught cattle", Article 51-A(g) enjoins it as a fundamental duty of every citizen "to have compassion for living creatures", which in its wider fold embraces the category of cattle spoken of specifically in Article 48.

¹² 2007 APTEL 711

*In Mohan Kumar Singhania & Ors. v. Union of India & Ors.*¹³ a governmental decision to give utmost importance to the training programme of the Indian Administrative Service selectees was upheld by deriving support from Article 51-A(j) of the Constitution, holding that the governmental decision was in consonance with one of the fundamental duties.

In State of U.P. v. Yamuna Shanker Misra & Ors.,¹⁴ this Court interpreted the object of writing the confidential reports and making entries in the character rolls by deriving support from Article 51-A(j) which enjoins upon every citizen the primary duty to constantly endeavour to strive towards excellence, individually and collectively.

In T.N. Godavarman Thirumalpad v. Union of India & Ors.,¹⁵ a three-Judge Bench of this Court read Article 48-A and Article 51-A together as laying down the foundation for a jurisprudence of environmental protection and held that "Today, the State and the citizens are under a fundamental obligation to protect and improve the environment, including forests, lakes, rivers, wild life and to have compassion for living creatures".

In State of W.B. & Ors. v. Sujit Kumar Rana,¹⁶ Articles 48 and 51-A(g) of the Constitution were read together and this Court expressed that these provisions have to be kept in mind while interpreting statutory provisions.

One of the other reasons which has been advanced for reversal of earlier judgments was that at the time when these earlier judgments were delivered Article 48(A) and 51(A) were not there and impact of both these Articles were not considered. It is true that Article 48(A) which was introduced by the 42nd Constitutional Amendment in 1976 with effect from 3.1.1977 and Article 51(A) i.e. fundamental duties were also brought about by the same amendment. Though, these Articles were not in existence at that time but the effect of those Articles were indirectly considered in the Mohd. Hanif Qureshi's case in 1958. It was mentioned that cow dung can be used for the purposes of manure as well as for the purpose of fuel that will be more eco friendly.

Article 253

Legislation for giving effect to international agreements notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power 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.

CONCLUSION.

Connecting human rights and environment is a valuable sourcebook that explores the uncharted territory that lies between environmental and human rights legislation. Human beings can ensure fundamental equality and adequate conditions of life in an environment that permits a life of dignity and well-being. There is an urgent need to formulate laws keeping in mind the fact that those who pollute or destroy the natural environment are not just committing a crime against nature, but are violating human rights as well. Indeed, health has seemed to be the subject that bridges gaps between the two fields of environmental protection and human rights. The advancement of the relationship between human rights and environment would enable incorporation of human rights principles within an environmental scope, such as antidiscrimination standards, the need for social participation and the protection of vulnerable groups.

From the foregoing analysis, it can be safely concluded that the Constitution of India is a dynamic document and Indian judiciary has, by using interpretative tools, declared various unremunerated rights as fundamental rights. Judiciary has not only declared right to clean environment as a fundamental right but has also developed environmental

¹³ 1992 Supp (1) SCC 594,

¹⁴ (1997) 4 SCC 7,

¹⁵ (2002) 10 SCC 606

¹⁶ (2004) 4 SCC 129

jurisprudence underlying various important principles like Polluter Pays Principle, Precautionary Principle, Public Trust Doctrine etc. However, despite active role played by the judiciary, the environmental pollution is on the rise. Moreover, no right can be fully protected and guaranteed unless the entire community recognize their moral, ethical, social and constitutional duties and rise up to abide by them.

