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CONSTITUTIONAL FRAMEWORK OF INDIA AND ENVIRONMENTAL PROTECTION: A LEGAL INSIGHT

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INTRODUCTION:

Mahatma Gandhi has very rightly said that “Earth provides enough to satisfy every man’s needs, but not every man’s greed.”

Margaret Mead – “We won’t have a society if we destroy our environment.”

God has gifted us this beautiful life on this amazing planet Earth. Every breath we breathe is possible because of nature, environment. One should ask oneself a question that “Do we have any existence without our environment?”, “Can we ever survive by destroying our nature and environment?”, “Is life on earth possible without the environment?” The moment you get answers to these questions will be the moment you will realize how important environment is, not only for us but also for our future generations to come. Environment is our MOTHER who takes care of all without demanding anything in return. And what have we humans done to Mother Earth and the environment? It is high time for humans to understand the value of environment. Environment provides us with fresh air, food, fruits, medicines and other necessities. It supports humans to live a healthy life. But unfortunately, deforestations, industrial activities, growing population, urbanization, technological advancements, have all collectively resulted in environmental degradation, which is a deep matter of utmost concern today.

CONSTITUTIONAL PROVISIONS AND ENVIRONMENTAL PROTECTION IN INDIA

PREAMBLE:

The Preamble of the Indian Constitution declares India to be a sovereign, socialist, secular, democratic and republic country. In other words, Preamble reflects the “socialistic” pattern of Indian society, which means that the state has to resolve the social problems of the people. The underlying idea behind the notion of socialism is to give Indians an acceptable and satisfactory standard of living. Pollution has been an all-time social problem. So, giving people a pollution-free and healthy environment is the responsibility of the state.

ARTICLE 48-A: PROTECTION AND IMPROVEMENT OF ENVIRONMENT AND SAFEGUARDING OF FORESTS AND WILDLIFE

Article 48-A was incorporated in Part IV of the Indian Constitution by 42nd Amendment, 1976. This Article directs the state to protect and improve the environment.¹

ARTICLE 51-A(g) : FUNDAMENTAL DUTIES

Part IV A of the Indian Constitution deals with Fundamental duties and was inserted into the Constitution by 42nd Amendment Act, 1976, upon the recommendation of the Swaran Singh Committee and to implement the guidelines of the Stockholm Conference, 1972 of which India was a signatory.² There are total 11 Fundamental Duties. Article 51-A (g) of the Indian Constitution imposes fundamental duty on every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.³

T. DAMODHAR RAO -VERSUS- S.O MUNICIPAL CORPORATION, HYDERABAD.

In this case, the court stated that under Article 48-A and 51-A (g), protection of environment is duty of every citizen as well as the state. Article 48-A and Article 51-A(g) collectively cast a constitutional obligation on both citizens and state to protect, preserve, conserve and improve the environment.⁴

M.C. MEHTA VERSUS STATE OF ORISSA

¹ Article 48-A, THE CONSTITUTION OF INDIA

² <https://lawcorner.in/fundamental-duties-and-environmental-protection/>

³ Article 51-A(g), THE CONSTITUTION OF INDIA

⁴ www.shodhganga.inflibnet.ac.in

The Orissa High Court in this case has observed that Article 48-A and 51-A (g) form the foundation of environmental jurisprudence. The court further stated that the state and citizens share equal responsibility to protect and improve the environment.⁵

ARTICLE 14: EQUALITY BEFORE LAW

This article mainly speaks about the right to equality⁶ which might get infringed due to the decision of the government/state which directly or indirectly has an impact on the society. Therefore, the environmental activist's groups take support and help of Article 14 to quash the decisions taken by any local body or government authority.⁷

BANGALORE MEDICAL TRUST VERSUS B.S MUDDAPPA, AIR, 1999, SC, 1902

Under the urban planning scheme, a land was allotted for the construction of a public park which was leased by the state government for the construction of a nursing home. The state government justified itself by stating that there was no nursing home in the locality and therefore the construction of a nursing home was in public interest.

The court observed that the park is a place for recreation and beauty and also highlighted the importance of public parks. Court further held that private nursing home cannot be considered as amenity nor it is an improvement over necessity like Public Park. It was further held that such conversion of a site reserved for Public Park into a nursing home is illegal.⁸

M.C MEHTA VERSUS KAMAL NATH

This is a landmark case in the development of Public Trust Doctrine in India. In 1972, in State of Himachal Pradesh, a lease was granted to a Motel owned by the family members of Shri Kamal Nath, for a period of 99 years (i.e.) till 2071. The leased land was located at the banks of River Beas. This said Motel encroached upon a substantial area of land that included reserved forestland and also diverted the course of River Beas to beautify the Motel. Justice Kuldeep Singh

⁵ www.lawcorner.in/fundamental-duties-and-environmental-protection/

⁶ Article 14, THE CONSTITUTION OF INDIA

⁷ www.legalservices.com

⁸ www.hestories.info

of Supreme Court delivered a landmark judgement by invoking the principle of Public Trust Doctrine. Supreme Court ordered the management of the Span Motel to handover forest land to the Government of Himachal Pradesh and remove all sorts of encroachments. By applying the Polluter Pays Principle, the Apex Court imposed a fine of Rs Ten Lakhs (10,00,000) on Span Motel as exemplary damages. In this case, Supreme Court recognized Polluter Pays Principle and Public Trust Doctrine.

This case is considered as a lode-star of Public Trust Litigations in India.

ARTICLE 19(1)(g): ALL CITIZENS HAVE THE RIGHT TO PRACTICE ANY PROFESSION, OR TO CARRY ANY OCCUPATION , TRADE OR BUSINESS.

This right, however, is subject to certain restrictions.⁹ Restrictions can be imposed for the benefit of the public at large. Thus, any business or establishment which possesses a threat to the environment will fall under the exceptions.¹⁰

Article 19(1) (g) of the Constitution of India provides right to practice any profession or to carry any occupation, trade or business to all citizens subject to Article 19(6) which enumerates the nature of restrictions that can be imposed by the state upon the above rights of the citizens.¹¹

Profession, occupation, trade, businesses which are not in interest of the general public may be completely prohibited while others may be permitted with some reasonable restrictions on them. To promote the interests of general public, the reasonable restrictions on the carrying on of any profession, occupation, trade, etc., may provide that such trade, business etc., may be carried on exclusively by the State or by a Corporation owned or controlled by it. The right conferred upon the citizens under Article 19(1)(g) is thus subject to the complete or partial prohibition or to regulation, by the State. However, under the provisions of Article 19(6) the prohibition, partial or complete, or the regulation, has to be in the interests of the general public. The right given by this article to freely carry on trade, commerce and intercourse throughout the territory of India is undisputedly subject to the same restrictions as is the right under Article 19(1)(g). This was elaborated in the case of Khoday Distilleries Ltd. V. State of Karnataka, (1995) 1 SCC 574.

KHODAY DISTILLERIES LTD VERSUS STATE OF KARNATAKA

⁹ Article 19(1)(g), THE CONSTITUTION OF INDIA

¹⁰ www.indianbarassociation.org

¹¹ www.shodhganga.inflibnet.ac.in

The right to practice any profession or to carry on any occupation, trade or business does not extend to practicing a profession or carrying on an occupation, trade or business which is inherently vicious and pernicious, and is condemned by all civilized societies. It does not entitle citizens to carry on trade or business in activities which are immoral and criminal and in articles or goods which are obnoxious and injurious to health, safety and welfare of the general public.¹²

ARTICLE 21: PROTECTION OF LIFE AND PERSONAL LIBERTY

Article 21 which speaks about fundamental right to life includes a right to live with dignity and to live in a pollution-free environment. Citizens can enjoy the right to life only when the environment they live in is pure, wholesome and healthy. Right to life thus runs parallel with a healthy, pure and pollution-free environment.¹³

RL & KENDRA DEHRADUN VERSUS STATE OF U.P, 1985

This case is also known as the Dehradun Quarrying case. The Apex Court in this case held that the lime stone quarries cause a lot of pollution and adversely affects the health of people and pollutes environment. It also affects the vegetation, life of villagers and animals. Supreme Court considered this as violative of Article 21 and therefore held that the quarries should be closed. In this case, the Supreme Court, for the first time held that the right to the wholesome environment is a part of right of life and personal liberty under Article 21. After this decision, right to pollution free environment was incorporated under the head Right to Life and all the courts within the Indian territory were bound to follow the same. This case laid the foundational structure of environmental litigation in India.

RATLAM MUNICIPALITY V VARDICHARAN, 1980

In this case, 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 21.¹⁴

LK KOOLWALA VERSUS STATE OF RAJASTHAN AND OTHERS, 1988

¹² www.lawfaculty.du.ac.in

¹³ Article 21, THE CONSTITUTION OF INDIA

¹⁴ www.indianbarassociation.org

There was a sanitation problem in Jaipur which was hazardous to the life of people living there. So, the petitioner filed a writ petition praying to the court to issue a direction to the state to perform its obligatory duties. The petitioner brought forth the acute problem of sanitation before the court by invoking fundamental rights and Directive Principles of State Policy.

The court observed that the environment, maintenance of health and sanitation falls within the purview of Article 21 of the Constitution of India, as it affects the lives of citizens adversely. Court further held that unchecked hazards acts as slow poison and reduces the life span of the citizens.

The court held that the Municipality was under a statutory duty to remove all the dirt, waste, filth, etc from the city within a period of 6 months from the date of this judgment. A committee was also constituted to monitor the implementation of the court's judgment.¹⁵

ARTICLE 253: LEGISLATION FOR GIVING EFFECT TO INTERNATIONAL AGREEMENTS.

According to Article 253, Parliament has the 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.¹⁶

CONCLUSION

In this article, constitutional provisions related to the environment and relevant cases on it have been presented. Judiciary has shown an active approach towards protection of environment and solving environmental issues. This is highly commendable. As a part of this society, people need to understand that protecting environment is not just the responsibility of the state or judiciary. The citizens also share an equal responsibility towards protecting environment and taking every possible care.

In addition to this, connecting human rights and environment will act as a valuable sourcebook that will explore the uncharted territory that lies between environment and human rights legislation. Human beings can ensure fundamental equality and adequate conditions of life in an

¹⁵ www.informea.org/en/court-decision

¹⁶ www.indianconstitution.in

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.