

Environmental Protection Act in Comparison with the Articles of Indian Constitution

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Abstract: *Environment means surrounding where we live, all the biological and non - biological things together form the environment. Thus environment is sum total of water, air and land, inter - relationships among themselves and also with the human being, other living organism and property. [Environmental Act, 1986] It indicates that environment includes all physical and biological surrounding and their relationship with each other. It is very much necessary to protect, conserve and preserve our environment for this generation and for the future generation also, basically it's the human right of everyone to live in a healthy and pollution free environment. We got some rights which is mentioned in our constitution [The Constitution of India, 1950] and we also have some fundamental duties which help us to protect and conserve our environment. As time passes citizen become more conscious about their right than the duties and start neglecting their duties. People started destroying the environment to fulfill their own need without showing any concern about the environment and forgot about their responsibilities to protect environment. The goal of this paper is to provide sufficient data regarding environmental protection act and its comparison with the articles of Indian constitution.*

Keywords: Environment, protection, conservation, constitution, right, duties, citizens

1. Introduction

The constitution is known as “basic law of land” that mean all other laws are derived from constitution. In India also all other laws derive their sanctity and validity from ‘The Indian Constitution, 1950.’ When our constitution was drafted it did not contain any specific provision related to environment and even the word “Environment” was also not there in our constitution, at the same time our constitution is not rigid. That is why, as and when it is felt that a special situation has arisen and the present constitutional provisions are not adequate and cannot deal with the new development effectively, they are amended¹ by parliament from time to time. In 1972 the first International Conference on Human Environment was held at Stockholm, it was addressed by the Prime Minister² of India and our Prime Minister showed a deep concern about the degradation of the environment and eco - imbalances. She also emphasized that pollution, population, and poverty are interrelated problems and there must be an integrated approach to deal with them. Therefore, to fulfil its promise made at Stockholm Conference, the Indian Parliament passed the 42nd Amendment³ and incorporated specially two articles⁴ relating to protection and improvement of the environment. Thus, India became the first country in the world to have provision on the environment in the constitution. And Indian Judicial Interpretation of different Fundamental Rights⁵ have widened their scope and proved effective in achieving environmental justice in India and gave environment an important position in our constitution and helped in the protection, conservation, and prevention of environment. Thus, to implement the decision of Stockholm Conference of 1972, which was an international conference, was within the

competence of Parliament and accordingly Parliament passed many laws, i. e. the Water Prevention and Control of Pollution Act, 1974; the Water Prevention and Control Act, 1981; and The Environmental Protection Act, 1986.

2. Background

The root of the enactment of the Environmental Protection Act lies in the United Nations on Human Environment held at Stockholm in June, 1972, in which India participated, to take steps for improvement of Human Environment. The Environmental Protection Act was enacted in 1986 with the objective of providing the protection and improvement of the environment. The Environmental Protection Act was enacted under Article - 253 of Indian Constitution. The Act consist of 26 sections divided into four chapters. Seven schedules dealing with emission standard of air, noise, effluent, etc. have been appended to it. Various rules including the Environment Protection Rules, 1986 have also been provided by the Indian Parliament with it.

Indian Constitution of 1950 did not have a clear mention of environment and did not have any provision related to environment protection, but after the Stockholm Conference awareness regarding environment started increasing among the government as well as citizens therefore, the Indian Parliament passed a historic amendment - 42nd Amendment Act 1976, this amendment made some changes in the existing constitution and incorporated two significant articles - Article 48 - A and Article 51 - A (g) for the protection and prevention of environment. And it also introduced certain changes in the Seventh Schedule of the Constitution.

¹Article 368- power of parliament to amend the constitution and procedure therefor

²The then Prime Minister of India, Mrs. Indira Gandhi

³The 42nd amendment received the assent of President of India on 16 December 1976

⁴Article 48A and Article 51A(g) of Indian Constitution

⁵Article 14-35 of Indian Constitution

The changes are as follows: -

Article 48 - A: - *Protection and improvement of environment and safeguarding of forest and wildlife.*

Article 51 - A (g): - *It shall be the duty of every citizen of India to protect and improve the natural environment*

including forest, lakes, rivers and wildlife, and to have compassion for living creatures.

And various items of State List⁶ were transferred to Concurrent List⁷ which empowered parliament to legislate on the issues related to environment such as forest, wildlife, population, family planning, etc.

The changes in Seventh Schedule are: -

17 - A - Forest

17 - B - Protection of wild animal and bird

20 - A - Population control and family planning

Constitutional provisions related to Environment

Right to Equality and Environment

Article - 14: - Equality before law – The state shall not deny to any person equality before law or the equal protection of law within the territory of India.

The India Constitution guarantees the “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 enshrined in Article 14 of the Constitution.

The Stockholm Declaration, 1972 also recognized the principle of equality in environmental management and it called up all the world’s nations to abide by this principle.

In *Kisan Bhagwat Gawali v. State of Maharashtra*⁸, the exclusion of a particular class of grazers from consideration and inclusion of some on the ground that the excluded class was indulging in illegal grazing in violative of Article 14 and invalid. Such policy decision is against the right to equality.

Freedom of Trade and Commerce and the Environment

Article - 19: - Protection of certain rights regarding freedom of speech, etc. - All citizens shall have the right - (g) to practice any profession, or carry on any occupation, trade or business.

As we can see that most of the pollution is mainly from trade and business, particularly from industries. It has been found that tanneries, acid factories, tie and dye factories, distilleries and hotel industries are contributing to environmental pollution. Some of these industries are operating in a manner which is very dangerous to vegetation, animal, aquatic life and as well as for human health. But at the same time there is some reasonable restriction on the fundamental rights also and freedom of trade and commerce is not absolute. Therefore, any trade or business that is harmful for flora or fauna or human being cannot be permitted to carry out in the name of fundamental right.

In *M. C. Mehta v. Kamal Nath*⁹, the Supreme Court made it very clear that if a hotel is discharging untreated effluent into the River Beas, thereby disturbing the aquatic life and causing water pollution, it cannot be permitted to work. Any disturbance of the basic environment elements namely, air, water and soil, which are necessary for life would be hazardous to life. Thus, the court in the exercise of jurisdiction under article 32 cannot only award damages but can also levy fine.

In *Utpal Barbara v. State of Assam*¹⁰, the court declare that total ban on the use of polythene bags by the Magistrate by issuing an order under Section 144, Criminal Procedure Code, 1973 is violative of the freedom of trade and business. The remedy instead of ban could have been take appropriate steps regulating its use and disposal and to resort to appropriate legislation for it.

In *Jackson and Co. v. Union of India*¹¹, the court clarified that if the state makes it compulsory to provide “acoustic enclosure” with diesel generator, it is not a restriction on the right to carry on any occupation, trade and business, but such restriction is with an aim to prevent noise pollution which is violative of the right to life enshrined in Article 21 of the Constitution. In this case, the petitioner were manufacturing diesel generators which were producing noise beyond permissible limits. It was also held that the State Governments are authorized to make such rules under Section 3 and 24 of Environmental Protection Act, 1986.

Right to Life and Right to Clean, Healthy Environment

Article - 21: - Protection of life and personal liberty. – No person shall be deprived of his life or personal liberty except according to procedure established by law.

This Article of Constitution guarantees the right to life and personal liberty, but it does not directly confer to clean and healthy environment. But various judicial pronouncements have expended the right to life and personal liberty and included the right to clean and healthy environment.

Any activity which pollutes the environment and makes it unhealthy, hazardous to human health or health of flora and fauna, is violative of this right which is guaranteed by Article 21. Similarly,” the slow poisoning by the polluted atmosphere caused by environmental pollution and spoliation should also regarded as amounting to violation of Article 21 of Constitution.”¹²

In *N. D. Jayal v. Union of India*¹³, the Supreme Court gave wider interpretation to right to life. It declared that the right to environment is fundamental right. On the other hand, the right to development is also fundamental right and right to sustainable development is also included in it. And the concept of sustainable development should be treated as an integral part of Life under Article 21. It was also clear that this right to development encompasses much more than

⁹(1997) 1 SCC 388

¹⁰AIR 1999 Gau 78

¹¹AIR 2005 Del 334

¹²T. Damodar Rao v. Municipal Corporation of Hyderabad, AIR 1987 AP 171

¹³(2004) 9 SCC 362, ILDC 456

⁶In seventh schedule State List consist of 66 items.

⁷In seventh schedule Concurrent List consist of 97 items.

⁸AIR 1990 Bom 343

economic well - being and includes within its definition the guarantee of fundamental human right. In this case, the petitioner urged the court to issue necessary directions to conduct further safety tests to ensure the safety of the dam at Tehri for hydel power and look into the rehabilitation aspect of migrants. It was made clear by the court that the right to health, clean and healthy environment is fundamental right under Article 21 of the Constitution.

In *Rural Litigation and Entitlement Kendra v. State of U. P.*¹⁴, the first case in India that deals with the environment and eco - imbalance problem, involved the haphazard and dangerous limestone quarrying practices in the Mussoorie hill range of Himalayas. Because of unbridled quarrying, vegetation started disappearing and resulted in shortage of potable water, damage to the ecology due to transportation activity creating noise pollution, air pollution, vibration and spread of debris of mines. The Rural Litigation and Entitlement Kendra never claimed the violation of the right to life guaranteed under Article 21 of the Constitution, but it can be inferred from the judgement that the Supreme Court entertained the environment complaint under the Article 32 of the Constitution as involving the violation of Article 21.

Protection and Improvement of Forest and Wildlife

Article - 48 - A: - Protection and improvement of environment and safeguarding of forest and wildlife. – The State shall endeavor to protect and improve the environment and to safeguard the forest and wildlife of the country.

This article deals with the environmental protection and it was inserted by 42nd amendment of the Constitution. It is the duty of the State to take steps to protect and improve the environment and to safeguard the forests and wildlife of the country.

In *M. C. Mehta v. Union of India*¹⁵, the Supreme Court, relying on Article 48 - A gave directions to the Central and State Government and various local bodies and Boards to take appropriate steps for the prevention and control of water pollution.

In *T. N. Godavarman Trimulpad v. Union of India*¹⁶, the State of Chhattisgarh took the plea that the State did not have enough money to implement the rescue plan to save wild buffalo from extinction, the plea of the State Government was rejected and directed that the state is bound under the Article 48 - A to protect and safeguard the wildlife and need to take immediate steps to ensure the protection of wildlife. The plea of shortage of fund was found untenable.

Therefore, Article 48 - A has clearly bestowed a responsibility on the State, State officials, State instrumentalities to protect and preserve the environment.

Article - 51 - A: - Fundamental Duties. - It shall be the duty of every citizen of India -

(g) to protect and improve the natural environment including forest, lakes, rivers and wildlife, and to have compassion for living creatures.

Under Article 52 - A (g), there is duty of citizens to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. There is a legal theory of “Doctrine of Public Trust” developed by the ancient Roman Empire that certain common properties such as water, sea, air and forest are of immense importance to people in general and they must be properly regulated by the Government and should be free and available to all the public and should not have any private ownership over these properties. The doctrine enjoins upon the Government to protect the resources for the enjoyment of general public rather than to permit their use for private ownership or commercial exploitation to satisfy the greed of the few.

In *Center for Public Interest Litigation v. Union of India*¹⁷, the Supreme Court held that natural resources belong to the people but the State legally owns them on the behalf of its people and the point of view natural resources are considered as national asset. In this case, airwaves were declared public property and thus the doctrine of Public Trust was applicable in distributing or passing the right to use them. It was declared that under Article 51 - A, the public functionaries also have a fundamental duty like other citizens to protect and preserve the national environment.

It can be said that constitutional scheme to protect and improve the environment has been provided under Article 48 - A and 51 - A. Article 48 - A has used the terms “environment, forest, and wildlife”. These three expression at one place simply indicates that these three are interrelated. Protection and improvement of environment is necessary for safeguarding forest and wildlife, which in turn protects and improves the environment. Forest and wildlife are clearly interrelated and interdependent.

Thus, the State and the citizens both are under constitutional obligation to protect and improve the environment including the protection of animals.

Salient Features of the Environmental Protection Act

The Central Government shall have the power to take all such measures which are necessary for the protection and improvement of environment in coordination with the State Governments.

The Central Government is also authorized or empowered to plan and execute nationwide programme for prevention, control, and abatement of environmental pollution. And lay down standards for emission or discharge of environmental pollutant from various sources and can also restrict industries or factories setup in particular area.

The Central Government, as per this Act, is entitled to establish environmental laboratories and recognize any laboratory or institution as environmental laboratory to carry out the functions entrusted to such laboratory. And can also

¹⁴AIR 594, 1989 SCC

¹⁵(1988) 1 SCC 471

¹⁶AIR 2012 SC 1254

¹⁷(2012) 3 SCC 1

make specific rules specifying the function of environmental laboratories.

The Central Government can appoint Government Analyst for analyzing the samples of air, water, soil or other substances to the environmental laboratories to analyze the quality of it.

As per this act the Central Government also has power to direct the closure, prohibition or regulation of any industry and can also direct the stoppage or regulation of supply of electricity, water or any other services.

As per this there is restriction on the discharge of pollutant, no individual can discharge or get permission to discharge pollutant in excess of the prescribed standards.

Any person empowered by Central Government shall have right to enter at any place for inspection of compliance of any order, notification and direction given under this Act.

If an offence under this Act is committed by the company, every person directly in charge of company, at the time of the commitment of offence, is deemed to be guilty unless proven otherwise.

If an offence under this Act is committed by any Department of the Government, the head of the department shall be deemed to be guilty of the offence unless proven otherwise or if any officer, other than head of department, if proven guilty shall also be liable to proceeded against and punished accordingly.

Any offence under Environmental Protection Act are punishable with the imprisonment of up to 5 years or fine up to 1 lakh rupee or both.

No court shall take cognizance of any offence under this Act except on a complain made by the Central Government or any authority on the behalf of it and a person who has approached the courts after a 60 - day notice has been furnished to the Central Government or the authority on the behalf of it.

Criticism of Environmental Protection Act

In this Act Center got more power and centralization of power is seen in this Act. The Center is granted more power than that of state and no power to the State Government, the former is liable to its arbitrariness and misuse of power.

In this Act there is no mention of citizen involvement in environment protection. To prevent arbitrary decision, increase understanding of the environment and increase empathy for the environment, it is important to involve the citizens in the environmental protection.

This Act also ignores the contemporary concept of pollution, including noise pollution, congested transportation system, and radiations, which also potential contributors to the decline of environment degradation.

3. Conclusion

The Environmental Protection Act provide with the significant advancement in the prevention and enhancement of the environment and it also established some strict rules for the prevention, control and reduction of environmental pollution. The Constitution of India is also included many Article through the 42nd amendment for the protection of our environment. But in spite of all these measures, legislations, rules and regulation, protection and preservation of environment is still a serious issue in our country. Environmental pollution has emerged as the serious threat to the life of people living in the country. After having so many rule and regulation environmental pollution is increasing day by day, we can easily find waste dump yard near our houses which are spreading pollution as well as many life threatening diseases. Nowadays, pollution become a social problem that need to be given proper attention. We have many Central and State legislations which deals with environmental issue but at the same time these legislations are not properly enforced. There is need of comprehensive and incorporated laws on environmental protection for significant enforcement. We have Environmental Protection Act, but there are some gaps in the Act that must be filled with changes to bring it up to date with the time. Government should take proper steps and measures to protect the environment and the citizens of the State should also follow their duty toward the protection of the environment.

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