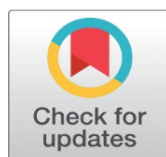
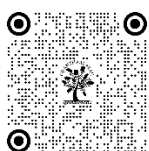


# EXISTING LEGAL PROVISIONS IN INDIA FOR THE PROTECTION OF THE ENVIRONMENT: A STUDY

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## ABSTRACT

No constitution deals, with matters such as environmental protection, because any constitution contains only the rules of laws concerning the power structure, allocation, and manner of exercise. Besides Indian constitution is already a bulky document and brevity is the character of an ideal constitution. Hence from the point of view of the principles of constitutional law as well as the length of the constitution, it was impossible to have any Such Provision Safeguarding the healthy environment. Therefore, till the Subsequent amendment the constitution text of India was without any specific provision for the protection and promotion of the environment. However, the seeds of such provision could be seen in Article 47 of the constitution which Commands the state to improve the slandered of living and public Health. To fulfill this Constitutional goal, the state must provide a pollution-free environment. To afford better protection for the environment, the constitution was amended. The amended provided the following Article 48-A: By the constitution (42nd Amendment) Act, protection and improvement of environment and safeguarding of forest and wildlife. The State shall endeavour to protect and improve the environment and safeguard the forest and wildlife of the country. Article 51-A (g) – By Constitution (42nd Amendment) Act, 1976 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.

**Keywords:** Environment, Power Structure, Wildlife

## 1. INTRODUCTION

No constitution deals, with matters such as environmental protection, because any constitution contains only the rules of laws concerning the power structure, allocation, and manner of exercise. Besides Indian constitution is already a bulky document and brevity is the character of an ideal constitution. Hence from the point of view of the principles of constitutional law as well as the length of the constitution, it was impossible to have any Such Provision Safeguarding the healthy environment. Therefore, till the Subsequent amendment the constitution text of India was without any specific provision for the protection and promotion of the environment. However, the seeds of such provision could be seen in Article 47 of the constitution which Commands the state to improve the slandered of living and

public Health. To fulfill this Constitutional goal, the state must provide a pollution-free environment. To afford better protection for the environment, the constitution was amended. The amended provided the following Article 48-A: By the constitution (42nd Amendment) Act, protection and improvement of environment and safeguarding of forest and wildlife. The State shall endeavour to protect and improve the environment and safeguard the forest and wildlife of the country. Article 51-A (g) – By Constitution (42nd Amendment) Act, 1976 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.

The constitution is known as the basic law of the land" from which all other Laws derive their Sanctity or Validity. Therefore, it is a living and growing law - which means it must be able to - cope with newer situations and developments. That is why as 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 amended by parliament from time to time. The prime minister of India (Mrs. Indira Gandhi) was the first head of the state to address the first international conference on the Human Environment in Stockholm in 1972; She voiced 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 fulfill its promises made at the Stockholm. conference, the Indian parliament passed the 42nd Amendment to the constitution in 1976 and incorporated Specially Two Articles relating to the protection and Improvement of the environment. Thus, India became the first country in the world to have a provision on the environment in the constitution.

## **2. METHODOLOGY**

### **2.1. OBJECTIVE OF STUDY**

The objective of the present study is Undertaken with the following points.

- To analyze the concept of environment and identify the problems and their Causes and to mention ways to protect the environment
- To observe the workings of the constitutional provision of the protection of the environment.
- To observe and Verify briefly general laws and other laws bearing provision for the protection of the environment and also working on the provision of Special Acts in prevention and protection of the environment.
- To observe briefly the provision of international documents, about the protection of the environment.

### **2.2. HYPOTHESIS**

- To observe and verify the state of affairs. the while implementing ant Various environmental laws and concepts.
- To study the role played by tribunals and environmental Courts.

### **2.3. RESEARCH METHODOLOGY AND SOURCE OF DATA**

The Research project study is completely done in doctrinal Study. The Secondary Source is also done in the form of doctrinal Research, The Secondary Sources of Data are Books, Journals, Articles, and Website online citations. Initially,

the Research began with the concept of environment for Understanding the Meaning of environment and knowing the effects and causes of environmental degradation. The Laws relating to the environment in the Indian constitution and other Laws were reviewed to understand the Legal framework. The concept of the environment has been reviewed because without knowing of it the filing of public Interest Litigation in protecting the environment would be useless.

Most of the books cover the chapter on Constitutional provisions for Environmental protection. The Seeds of such provision Could Be Seen in Article 47 of the Constitution of India, which commands the state to improve the standard of living and public health. To fulfill this constitutional goal the state must provide a pollution-free environment. At the United Nations Conference on Human Environment in Stockholm. Then Prime Minister of India Late Smt. Indira Gandhi displayed the nation's Commitment to the protection of the environment.

## **2.4. REVIEW OF LITERATURE**

To Understand the role of Legislation in the protection of the environment, a detailed review of constitutional provisions and other environmental laws was reviewed by the Researcher. The literature Studied, much Legislation for the protection of the environment like the Water (prevention and control of Pollution) Act, 1974. Air (prevention and control of pollution) Act, 1981, Environment (Protection) Act, 1986, wildlife. protection Act 1972. Indian Forest Act, Biological. Diversity Act, 2002 was studied.

S.C. Shastri- stated in his book "Environment, Energy and Climate Change"-by Navneet Vibhav in the Air Laws in India Challenges and Solution of Pollution, explained, that legislation has worked in parts, clearly the reason for its failure has been the poor Implementation.

## **3. RIGHT TO LIFE AND RIGHT TO CLEAN, HEALTHY ENVIRONMENT**

Article 21 of the Indian constitution, although it guarantees the Right to life and Personal liberty, does not directly confer the right to clean, Unpolluted can of a healthy environment. But the various judicial pronouncements on Various occasions have expanded the Right to Life and personal liberty to include this Right by recognizing various "Unarticulated liberties" as recognized by Article 21.

In a recently decided case the Supreme Court of India declared that the "grim situation of Air quality, adversely affected the right to education, work, health and ultimately, the right to life of citizen and this Court is constitutionally bound to address their grave concern . "In Hinchlal Tiwari V. Kamla Devi the Supreme Court declared that the Material resources of a community like forests, tank ponds, mountains, etc. are natural bounties. They maintain a delicate ecological balance. They need to be protected for a proper and healthy environment that enables people to enjoy a quality of life which is the essence of guaranteed rights Under Article 21 of the Constitution.

The Court decided that the pond's land Could not be allotted for a residential purpose.

In M.C. Mehta V. Kamalnath Justice Sagir Ahmed J. explained: To afford protection to "Life" to protect the environment and order to protect "Air, water and soil" from pollution, this Court through its Various Judgments has given effect to the

rights available, to the citizen and other person alike, Under Article 21 of the constitution.

It was clarified by the Supreme Court that Any disturbance of the basic environmental elements, namely Air, water and soil which are necessary for Life, would be hazardous to Life within the meaning of Article 21 of the constitution. Various Provisions of the other environmental Laws, for example, the Provision of Water (Prevention and Control) Act, 1974 or the Air (Prevention and Control) Act 1981 have also been enforced by the Court Under Article 21 of the constitution. The Supreme Court has given a wider interpretation of the Fundamental Rights. The expression "life" assured in Article 21 of the constitution does not connote mere animal existence of continued drudgery through Life. It has a much wider meaning which includes the right to livelihood, better standard of Life, hygiene conditions in the workplace, and leisure.

All this means that the Right to Life means the right to Live with human dignity and the quality of Life as Understood in its richness and fullness by the Ambit of the Constitution. It also encompasses within its fold some of the finer facets of human civilization that make life worth living. It has been declared by the Supreme Court that " the jurisprudence developed by this court environment is merely a Statutory issue. Environment is one of the facets of the right to life guaranteed Under Article 21 of the Constitution. The Court also made it clear that since the environment is a matter directly Under the Constitution " if the Court perceives any project or activity as harmful or injurious to the environment it would feel obliged to step in."

In Rural Ligation Entitlement Kendra V. State of UP the first case of its kind in India involving environmental and eco-imbalance problems involved the haphazard and dangerous limestone quarrying practices in the Mussoorie hill range of Himalayas. Because of Quarrying vegetation Cover and natural falls Started disappearing resulting in the storage of potable water, damage to ecology due to transportation activities creating noise pollution, Air pollution and the Spread of debris in the mine. The (RLEKS never claimed the violation of the Right to Life guaranteed Under Article 21 of the constitution, but it can be inferred from the judgment that the Supreme Court entertained the environmental Complaint Under Article 32 of the constitution as involving the violation of Article 21 of its right to life.

### **3.1. FUNDAMENTAL DUTY OF CITIZEN AND THE ENVIRONMENT**

Article 51-A of the constitution confers one of the Fundamental duties and improves the natural environment. It provides as follows: 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. Preservation of the environment and Keeping the ecological unaffected is a task that not only the government but also every Citizen must undertake. It is a social obligation and it is also a duty to remind every Citizen that it is his fundamental duty as enshrined in Article 51-A(g) of the constitution .9

It has also explained that two Articles 48-A and 51-A(g) are not only fundamental governance of the Country but State also must apply these principles in making the laws; further, these two Articles are to be kept in mind in Understanding the Scope and Purpose of fundamental Rights guaranteed by the constitution including Article 14, 19 and 21 and also the various laws enacted by the parliament and the State Legislature.

C.M. Jariwala one of the pioneers in the field of environmental Law, has rightly observed that Articles 48-A and 51-A(g) reflect principles of intergenerational equity" and various pronouncement made by the Supreme Court" envisages an emergence of right of Unborn." This right to intergenerational equity and the Right to a clean environment has emerged from Articles 21-A, 48-A, and 51-A(g) and the existing generation to use nature according to one's Capacity to Repay. Further man was Simply a Trustee of nature for generations to Come and not a grabber who may plunder what he can. The Supreme Court has declared that the "Forest" which constitutes a national asset "refers to the concept of intergenerational equity" which has been treated to be an integral part of Article 21 of the Constituting of India.

#### **4. CONSTITUTION AND ENVIRONMENT**

In the 1980s, the Indian legal system underwent a sea change in terms of discarding its moribund approach and, instead, charting out new horizons of social justice. This period was characterised by administrative, legislative and judicial activism. Although the expression 'environment' has not been expressly mentioned in the Constitution, however, as discussed earlier, there are many items in the legislative lists, which enable the Centre and the states to make laws in the field of environment. It took a long time for the apex court to pronounce explicitly that the right to life under Art 21 of the Constitution includes the right to live in a healthy environment. The courts often had to decide on the conflicts of rights between citizens. For instance, the freedom of speech and expression; the right to carry on a business, trade, or occupation; the freedom of religion; and above all the right to equality are the areas, where these conflicts arise in contra-distinction to the right to a healthy environment under art 21. The freedom of inter-state commerce was also adverted. There were conflicts between Central legislation and state legislation. The constitutional mandate under the directive principle and the fundamental duty to protect and improve the environment have a substantial role to play in reconciling these conflicts.

In a modern welfare state, justice has to address social realities and meet the demands of time. Protection of the environment throws up innumerable challenges for a developing nation. Administrative and legislative strategies to bring harmony between environmental values and developmental needs are imperative. These strategies are to be formulated within the prevailing socio-economic conditions to fulfill the hopes and aspirations of the present and future generations. In determining the scope of the powers and functions of administrative agencies at this level, and in striking a balance between the environment and development, the courts have a crucial role to play.

The judiciary's concern for the maintenance and preservation of forests, one of the depleting natural resources, has already been highlighted. The need for sustainable 4 management of other resources, especially, coastal 3 resources, was examined early on. This chapter deals with the constitutional safeguards that evolved through the judicial process for a clean and humane environment.

##### **4.1. RIGHT TO LIVE WITH HUMAN DIGNITY**

The concepts, 'the right to life', 'personal liberty' and 'procedure established by law' contained in Art 215 of the Constitution after a period of inertia, found new meanings through constitutional interpretations culminating in the landmark decision in *Maneka Gandhi v Union of India* where the Supreme Court held that the right to life and personal liberty, guaranteed under art 21 can be infringed only by a



'just, fair and reasonable' procedure. The narrow interpretation of legal and constitutional provisions slowly gave way to a more liberal interpretation that kept in view the purpose of constitutional guarantees. Holding initially as generating procedural justice, the highest court of the country later widened the scope, tailoring more substantive rights to life into art 21. The right to life is not confined to mere animal existence but extends to the right to live with basic human dignity.

## **4.2. HIGH COURTS BECOME MORE ACTIVE**

While the apex court was reluctant for a short period, various high courts in the country went ahead and enthusiastically declared that the right to environment was included in the right to life concept in Art 21 of the Constitution. In comprehending the right to environment, the high courts were more specific and direct. *T Damodhar Rao v Special Officer, Municipal Corporation of Hyderabad* is a landmark decision. The people living in a residential area challenged the attempt to convert open space in their vicinity into another residential complex. The court noted that the directions in the development plan on the nature of the use as open space would prevail. The ownership subsequently acquired stood curtailed by the development plan and the attempt to build houses in such open space was contrary to law.

The court further held: *tanan site to zivil sidre ...environmental law has succeeded in unshackling man's right to life and personal liberty from the clutches of common law theory of individual ownership. Examining the matter from the above constitutional point of view, it would be reasonable to hold that the enjoyment of life and its attainments and fulfillment guaranteed by Art 21 of the Constitution embraces the protection and preservation of nature's gifts without (which) life cannot be enjoyed. There can be no reason why the practice of violent extinguishment of life alone would be regarded as violative of Art 21 of the Constitution. The slow poisoning by the polluted atmosphere caused by environmental pollution and spoliation should also be regarded as amounting to a violation of Art 21 of the Constitution.*

Although *Rural Litigation Kendra's* case was not based on Art 21, however, the Andhra Pradesh High Court held in *Damodaran Rao* that the judgment of the *Rural Litigation Kendra* case could only be understood in one sense. The Supreme Court entertained the complaints against environmental violations under Art 32 of the Constitution as involving violations of the right to life guaranteed under Art 21. As the enforcing organs of constitutional objectives, courts must forbid all actions of the state and citizens from upsetting the environmental balance. This would be utterly defeated by not only attempts to build houses in the open space but also subjecting the area to any other use.

## **4.3. THE APEX COURT STRIKES**

The first time when the Supreme Court came close to declaring the right to environment in Art 21 was in the early nineties. In *Chhetriya Pardushan Mukti Sangarsh Samiti v State of Uttar Pradesh*, Sabyasachi Mukherjee CJ observed: Every citizen has a fundamental right to have the enjoyment of quality of life and living as contemplated in Art 21 of the Constitution of India. In *Subhash Kumar v State of Bihar*, KN Singh J observed more vividly: 'Right to live... includes the right to enjoyment of pollution free water and air for full enjoyment of life'. However, in both cases, the court did not get an opportunity to apply the principles to the facts as the court found that the petitioners had made false allegations due to a personal grudge towards the respondent companies alleged to be polluting the environment.

The real opportunity came before the Supreme Court in the year 1991 in Bangalore Medical Trust V. B S Mudappa . The interesting question was whether an open space laid down as such in a development scheme could be leased out for a private nursing home. Justice Thommen answered the question in the negative. Once appropriated or earmarked as 'open space' or for building purposes or other development as part of the scheme adopted by a local authority like the Bangalore Development Authority (BDA), the land should be used for that purpose. If it is to be used for any other purpose, the scheme itself should be altered in the manner in which, by law, the authority as a corporate body is competent to alter. In the same case, Sahai J said that by mechanically approving the unilateral direction of the Chief Minister of the state, the BDA neither applied its mind nor did it have a participatory exercise, as a corporate body, into the need for a private nursing home in the place of open space.

The court emphasized the constitutional mandate for the protection of individual freedom and dignity and the attainment of a quality of life, which a healthy and clean environment guarantees. "Arguably, Mudappa did not categorically lay down the right to environment as part of the right to life. However, the court's decision endorsed the position that open space being the lung space for urban sprawl, is an essential ingredient of a development scheme. In case the development authority, after observing the statutory formalities and procedures such as the participatory exercises and deliberations and application of its mind, converts open space into a hospital site, the said action may still be invalid. Observance of statutory procedure shall not make an action valid if the action otherwise violates fundamental rights.

## **5. CONCLUSION**

The researcher concludes by Saying That the Court rightly pointed out that waterbodies are required to be retained such requirement is envisaged not only because the Right to water as also Quality of Life are envisaged Under Article 21 of the constitution of India" but also because the Same has been recognized in Article 47 and 48-A of the constitution of India. Article 51-A furthermore makes it a fundamental duty of every Citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife.

## **CONFLICT OF INTERESTS**

None.

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