



Indian constitution & legislation endeavour for protection of environment

Ravindra Kumar Giri

Research Scholar, Department of Law, Shri Venkateshwara University, Gajraula, Utter Pradesh, India

Abstract

The protection of the environment is such an important issue and it has already taken a serious position in front of all the countries across the world as a crisis and it is very critical and necessary to take appropriate steps to protect the environment. So all the living being will continue to survive smoothly and happy on the earth. For the protection of the environment many provisions provided in the constitution of India and others statutes such as environmental protection act 1986 etc. The judiciary has from time to time handed down its judgment and decision on various environmental issues. But the degradation of environment increases day by day. Now the time has come, when each country must seriously strive to maintain ecological balance, so that people can live in the healthy environment.

The main aims of the article, promoting the radical and concrete steps which should be taken by the government authorities for the protection of environment.

Keywords: constitution & legislation endeavor, ecological, healthy environment

Introduction

“The air is the guru, water our father, and the great earth, our mother”^[1]

The above quotation gives the clear indication that air, water and the earth are fundamental basis of not only the human life but all the living creatures on the planet. Survival of human being is directly related with the nature. Almost all the necessities of life are depended on the nature. It's necessary for “life support system” without the support from the healthy environment it's very difficult to survive. Most of the necessity of life are fulfilled by the factors derived from the environment.

What is Environment?

Environment means our surrounding atmosphere. Literally, the expression “environment contains air, water, food and sunlight etc. Environment affects all the living creatures including the plants and trees. A number of necessities of life are fulfilled rather derived from the environment^[2].

Thus, it can be said that the environment is the life support system^[3].

Type of Environment

There are two types of environment

1. Natural environment
2. Man made environment – It's created by men such as communication networks like Telephone, Fax, Satellite etc.

Objective of Research

How to control the degradation of environment by effective legislative measures and public awareness programmes. My research work is to promote the radical and concrete steps to be taken by the govt. bodies and legislative authority and also

to promote the awareness among the general public regarding the importance of preserving the environment.

Necessity of Environment Protection

Every human being has the right to leave in the healthy environment and for which environmental protection is essential. It's compulsory for ‘life support system’. “It has been universally accepted that human happiness and growth which are fundamental for the well-being of the society cannot be achieved without protection and preservation of environment”^[4]. A good environment helps all round development of one's personality.

Thus, it's clear that environment protection is compulsory for protecting the nature's gift to man and women such as water, air, earth and atmosphere from pollution.

Protection of Environment in Ancient India....

The campaign of environmental protection is not a new concept. But it has been in prevalence from time immemorial. It is to be noted that during ancient period human being and nature were regarded inseparable. At that time a man never had an opportunity to pollute environment indiscriminately as on today. Ancient man was afraid of the nature environment and did not dare to pollute and damage the nature. This trend of polluting the environment was not present during the ancient time. The trees, animals, air, water, and land were worshipped by the society^[5].

According to Rig Veda the universe consists of five elements such as Earth, Water, Air, Fire and Ether (Space). This has been accepted by Mahatma Tulsi Das also in his book “Shri Ram Charit Manas.” These five elements are basis of life of everything and man is ordinate to conserve them^[6].

In ancient Bharat Dharma of every individual to protect and worship nature^[7]. In Hinduism, nature is considered as “the

body of God” Accordingly different aspect of nature, i.e., Plant, (Tulsi), Trees (Peepal), birds (Garuda) and animals (Lion) are worshipped. In this way nature has been directly inter-connected with religion and religion has thus direct effect on the conservation and protection of environment. The Dharma of environment was to sustain and ensure progress and welfare of all. The inner urge of individuals to follow set norms of society, motivated them to allow the natural objects to remain in the natural state. The most outstanding development of this period was that each individual knew his duty to protect the environment and he tried to act accordingly so that environment may not be polluted.

With the growth of civilization, it expended in various dimensions. There is a need for the protection of environment among the people. A number of conferences, Seminars and workshops are being organized every year. Various steps have also been taken for both at national and international level but these steps and measures adopted are not sufficient to check the menace of pollution. The rapid increase in pollution, accelerated exploitation of natural resources and industrialization, unchecked use of chemical and pesticides etc. lead to environmental hazard.

The problem of pollution is so serious that Dr. Kurt Waldheim, the then UN Secretary General declared in 1972, that “no nation, no continent, no hemisphere, no race, no system, can handle it alone. So we must pool all our resources, knowledge and means to check pollution of water, air, destruction of Forest and other natural resources, knowledge, and means to check pollution of water, air, destruction of forest and other natural resources to ensure health and life for us and for our future generation. Scientist, Jurists, Administrators must join their heads and hearts in this task for success free pollution.”^[8]

International Perspective for Environment Protection

On the International plane, there was hardly any awareness about the problem of Environment and need for the protection of Environment until the latter half of the 20th century. The developed countries of the world were exploiting their material resources to the maximum extent for their economic and industrial development and the developing countries were also not lagging behind in this endeavour. The allegations and counter-allegations by the developed and developing countries against each other for polluting the Environment and creating ecological crisis continued until the last quarter of the 20th century^[9].

However, the U. N. Conference on Human Environment held in Stockholm on 15-16 June, 1972 was the first attempt by these counties to solve the global problem of conservation and regulation of environment by an international agreement. The need for international co-operation of all the nations whether developed, developing or semi-developing, was the theme of the conference. It was emphasized that environment and development are means and not the end in themselves. That means, environment and development are for the people, and not people for environment and development. The Stockholm declaration on human environment is considered to be the Magnacarta of environmental protection. The declaration alongwith the Preamble consists of seven universal truths and twenty six Principles.

The International community under the banner of the united nation organization has adopted several resolutions and held convention and also guided the member nations to take immediate measure for protecting and maintaining environmental standard. At International Forum it was suggested that a National be prohibited to undertake activities within its jurisdiction which have the effect of polluting the water, Air of neighbouring nation. Even in absence of treaty law it is obligatory upon every nation to adopt the principle of customary International law^[10].

The United nations conference in Stockholm on the human environment is a landmark milestone at the International level for the protection of the deteriorating environment. The agenda of the conference was as follows.

- a. Planning and management of human settlements for environmental quality.
- b. Environmental aspects of natural resources management.
- c. Identifications and control of pollutants and nuisances of broad international significance.
- d. Educational, Information, Social and Cultural aspect of environmental issues.
- e. Development and environment

The Stockholm conference agenda, proclamations, principles and subsequent global, environment protection efforts shows the concern of the need to preserve and protect the environment. The conference acclaimed man’s fundamental right to live in healthy conditions of life in an environment of a quality that permitted a life of dignity and well being.

India Participated in the world conference held at Stockholm. Mrs. Indira Gandhi the then Prime Minister of India declared a suitable environmental policy for India. But real awakening came when Bhopal Gas Tragedy happened on Dec. 4, 1984^[11].

People’s Role in Environmental Protection.....

Inspired by environmental consciousness, certain environmentalists launched regular movement to generate awareness among the general public regarding need for free ad unpolluted environment for protecting forests, trees, plants etc. from destruction.

Chipko Movement was launched by noted environmentalist Shri Sunder Lal Bahuguna in early 1970s in protest against indiscriminate cutting of trees and deforestation. The volunteers of the movement were hugging trees to protect against their indiscriminate felling^[12].

Environmental Law

Environmental law is the law relating to environment. It deals with the protection of environment and seeks to control and prevent environmental Pollution. For this purpose, it constitutes environmental authorities, provide the powers and lay down their functions duties and liabilities. Object of environmental law is to protect the nature gift to man and women such as water, air, earth and atmosphere from pollution^[13].

Environmental Education

On a number of occasion the S.C. of India has emphasized that the environmental education should be imparted from

primary school to college/university level. The court expressed the view that it would be proper to lay down the necessary educational programmes.

Necessity of Environmental Education.....Some of them are as follows.

1. Environmental awareness among the people.
2. Finding out solution to the environmental problems
3. Conservation and preservation of natural resources.
4. Sustainable development of environment quality^[14].

Constitutional Provision for Environmental Protection

India is the first country in the world, which has provided for environmental protection by the Constitutional amendment brought in the year 1976^[15].

As far as from the point of view of the Constitutional law is concerned. There was no provision, safeguarding the healthy environment. Therefore till the subsequent amendments the constitutional 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 command, the state to improve the standard of living and public health. To fulfill this constitutional goal, it's necessary that the state should provide pollution free environment.

To comply with the principles of the Stockholm declaration adopted by the international conference on environment, the government of India, by the Constitution 42nd amendment 1976 made the express provisions for the protection and promotion of the environment, by the introduction of Art. 48-A and 51-A (g) which form the part of directive principles of state policy and the fundamental duties respectively. The Indian constitution makes two fold provisions.

- a. On the one hand, it gives directive to the state for the protection and improvement of environment.
- b. On the other hand the citizen has a constitutional duty to protect and improve natural environment.

In protecting the natural environment Article 48-A is of immense importance today. Because with the activist approach of judiciary in India the legal value of directive principles jurisprudence has constantly grown up in the India Constitutional set-up. Hence the above provisions are of pivotal significance. The government of India has to accelerate the efforts of environment protection.

The legislative powers under the constitutional scheme are divided into three lists –

List 1 (Union List) Entries

- Industries-Entry 52
- Regulation and development of oil fields and mineral oil/resources-Entry 53
- Regulation of mines and mineral development-Entry 54
- Regulation and development of inter-stated rivers and rivers valley-Entry 55
- Finishing and fisheries beyond territorial waters-Entry 57

List 2nd (State list) Entries

- Public health and sanitation - Entry 6
- Agriculture protection against pests and prevention of plant disease - Entry 14

- Land, colonization, etc.- Entry 18
- Fisheries - Entry 21
- Mines and minerals subject to provisions of list 1 - Entry 24

List 3rd (Concurrent list) Entries

Both Parliament and State Legislature have power to make laws:

- a. Forests-Entry 17-A
- b. Protection of wild animals - Entry 17-B
- c. Economic and social planning - Entry 20-A^[16]

Thus, it is clear that our Constitution enshrines ample provision to deal with environmental pollution.

The 12th schedule of the constitution added by 74th amendment act, 1992 commands the urban local bodies such as municipalities to perform the functions of protection of environment and promotion of ecological aspects. The Constitutional changes effected in the 7th schedule by the 42nd amendments, 1976 is a milestone steps, in the direction of the protection of environment. Because the subject of forests originally was in the state list as entry 19, this resulted into no uniform policy by the state so as to protect the forests. By placing the items forest now in the concurrent list by the entry 17-A, along with the State, Parliament has acquired a law making power. Because of the above change, in order to have a uniform policy in the forest management the government of India in the year 1980 set up the Ministry of environment and forests. By virtues of this change Parliament also, the central legislation i.e. forest Conservation Act, 1980, which was amended in 1988. The Government also adopted the new national forest policy in 1988 with a human object. One to protect the forests and another to consider the needs of the forest dwellers.

Similarly the insertion of the entry 17-B in the concurrent list has empowered the Parliament to enact a law with a view to protect of wild animals and birds. Although we had a comprehensive legislation in the form of wildlife protection act of 1972 the 42nd amendment has considered the wildlife along with forests. India has also formulated national action plan for the protection for wild life. The new entry 20A in the concurrent list empowers the parliament to regulate the population. By these changes, legally and constitutionally it has become possible to make a uniform action in the matters of proper management of the environment. According to the N.D. Tiwari Committee report there are two hundred central and state statues for environmental protection.

Judicial Interpretation

The Judiciary has, from time to time, handed down its judgment and decision on various environmental issues. The remedies available in India for pollution comprise common law remedies, remedies under the law of Torts, Criminal Law remedies, Civil remedy and Constitutional remedies^[17]. According to the Stockholm Declaration, 1972, every person has a fundamental right to an environment of quality that permit a life of dignity and well-being, and has a solemn responsibility to protect and improve the environment for present and future generations. This principle of Stockholm Declaration is directly related to the right to life and personal

liberty, equality, freedom of expression and right to trade and Commerce guaranteed under the Constitution of India by Judicial Interpretation. The Courts have contributed substantially in protecting and improving environment by issuing orders/directions on environment. Some of them are as follows:

In the case of Rural Litigation V. State of U.P.^[18].In this case S.C. first time recognized requirement of healthy environment as a part of right to life under Article 21. It's landmark decision. This case also known as Doon Valley case.....

Abhilash Textiles V. Rajkot Municipal Corporation^[19]:S.C. direction to municipalities to maintain proper drainage and sewage system for the preservation of environmental and public health.....

G.N.K Hujuria V. D.D.A^[20]..... The court ordered that the portion of nursery school building already constructed be demolished and the land brought to its original form for developing a park keeping in view the environmental needs.....Govind V. Shanti Sarup^[21] under sec.133 of the code of Criminal procedure was used by the Court to preserve the environment in the interest of "health".....

M.C. Mehta V. Union of India^[22]: The S.C. directed that there is need to control and regulate traffic particularly in N.C.R. to minimize pollution and protection environment as vehicle emissions were causing a threat to human health which was violation of Art 21 of the Constitution.

P.A. Jacob V. Supdt. of Police Kottayam^[23]: The Kerala H.C. held that noise pollution beyond reasonable limit is violation of Art. 21 of constitution.

State of Gujarat V. Mirzapur Moti Kureshi^[24] :- The S.C. held -----That while 48-A deals with environment, Art.51-A(G) speaks of 'natural environment' which includes therein forests; lakes, rivers and wildlife. Art.48 speaks of cows, calves and other milk and draught cattle. Art.51-A (g) casts a duty upon every citizen to have compassion for living creature, which also include cattle mentioned.

Obayya Pujari V. Member Secretary, K.S.P.C.B.^[25]:- H.C. Karnataka held that issue of a licence to stone crushing units does not confer on them unrestricted and absolute right to carry on commercial activities of occupation as the freedom of trade and business under Art. 19(1) (g) is subject to reasonable restrictions and can be regulated by the state or the court if the environmental safety so necessitates.

M.C. Mehta V. Union of India^[26]:- The Apex court held that under Art.51-A (g) it is the duty of the Central Govt. to introduce compulsory teaching of lesson at least for one hour in a week on protection and improvement on natural environment in all the educational institution of the country.

Therefore it's clear that judiciary play very important role in the filed of environmental protection from time to time.

Thus, the major problem of environmental pollution can be solved up to a certain extent, if there is an effective mechanism to implement the environmental laws and there is also a need of mass education and awareness about the environment. Now the time has come, when each country must seriously strive to maintain ecological balance, so that people can live in the healthy environment^[27].

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