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CONSTITUTIONAL PROVISIONS RELATING TO ENVIRONMENTAL PROTECTION

ABSTRACT

India's constitution is not a static text; it is a living document that changes and evolves with time. The constitution's special provisions on environmental protection are also a product of the fundamental law of the land's dynamic nature and potential for growth. In the Indian context, environmental protection has not only been elevated to the status of a fundamental law of the land but it has also been woven with a human rights approach and is now considered a well-established fact that it is every individual's basic human right to live in a pollution-free environment with complete human dignity. The preamble to our constitution ensures a socialist pattern of society and individual dignity. This entails a decent standard of living and a pollution-free environment.

The fundamental duties clearly state that all citizens have a responsibility to protect the environment. The Directive principles are also geared toward achieving the goals of establishing a welfare state. One of the most important aspects of a welfare state is a healthy environment. Article 47 indicates that raising the quality of nutrition and standard of life of its citizens, as well as improving public health, which includes environmental protection and improvement, are among the state's primary responsibilities. According to Article 48-A of the constitution, the state must work to maintain and improve the environment, as well as the country's forests and animals. Part III protects fundamental rights that are necessary for a person's growth. A citizen cannot engage in business if it poses a health risk to society or the wider public. This article discusses the environmental protection provisions of the Constitution

INTRODUCTION :

The Indian Constitution, as the supreme legislation, symbolizes a deeper national commitment to the preservation and protection of a clean and healthy environment. It protects the right to life as well as the right to personal liberty.¹ They are strengthened even more by numerous Indian judicial decisions.² The Indian Constitution has set a duty on both the State and citizens to safeguard and preserve the natural environment in order to attain the above-mentioned goal.³ These provisions are at the heart of our constitutional duty, highlighting the national consensus on the significance of environmental conservation and improvement in order to establish the foundation for environmental jurisprudence. The following are the provisions of the constitution.

DISTRIBUTION OF LEGISLATIVE POWERS BETWEEN UNION AND STATES:

The Indian Constitution establishes a federal structure. The legislative relationships between the Union and the States are discussed in Part XI. Schedule VII divides the subjects of legislation between the Union and the States, whereas Article 246 imposes legislative competence on the Union and the States.⁴

There are three types of lists in the Indian Constitution: union, state, and concurrent. The government's powers are divided between the states and the union. The union list is dealt with by the central government, whereas the state list is dealt with by the state government. As a result, Parliament has exclusive legislative authority over the union list, which is list I, while the states have authority over the state list, which is list II. Both the state and the central government share the authority to deal with issues in the concurrent list, i.e. list III.⁵

There is no specific mention of the environment in any of the Seventh Schedule lists. Though List I include topics such as the United Nations, signing treaties and agreements with other countries, and

¹ Pooja P. Vardhan, *Environment Protection under Constitutional Framework of India*, PIB, (4 June-2014.,12:25 PM). <https://pib.gov.in/>

² Parmanand Katara v. Union of India. AIR 1989 SC 2039, Kharak Singh v. State of U.P. AIR 1963 SC 1295; Pashchim Bang Khet Mazdoor Samiti v. State of West Bengal AIR 1996 SC 2426; Consumer Education and Research Centre v. Union of India (1995) 3 SCC 42; Kirloskar Brothers v. Employees State Insurance Corporation (1996) 2 SCC 682; State of Punjab v. Mohinder Singh Chawla AIR 1997 SC 1225; N.D. Jayal v. Union of India, (2004) 9 SCC 362.

³ INDIA CONST. art 48-A and 51(A)(g).

⁴ Ezeifekwuaba Tochukwu Benedict, *India Natural Environment Protection and Constitutional Provisions: A Legal Overview*, SSRN December 8, 2019, <https://dx.doi.org/10.2139/ssrn.3500560>.

⁵ Indianbarassociation.org, <https://www.indianbarassociation.org/wp-content/uploads/2013/02/environmental-law-article.pdf> (last visited on 01-05-2023).

implementing conventions, treaties, and agreements. It also covers topics such as industry regulations, mines and minerals, ports, and other topics with an inter-state or pan-India impact.⁶

List II includes topics such as public health and sanitation, as well as topics related to agriculture and industry. Union has the sole power to adopt laws on issues not listed in any of the lists, according to Article 248 read with entry 97 List I.⁷ The Constitution (Forty-second Amendment) Act of 1976 added entries 17A and 17B to the Concurrent List, respectively, pertaining to forests and the protection of wild animals and birds.⁸

Article 253 of the Constitution authorizes our country's Parliament to enact laws that apply to the entire or any part of the country's territory in order to carry out an agreement or convention signed with another country or country.⁹ The union list's numbers 13 and 14 refer to items that the parliament can legislate on. It ensures "*involvement in international associations, conferences, and other organizations, as well as the execution of threats made*" and "*entry into agreements and treaties with foreign nations, including conventions.*"

The Air (Control and Prevention of Pollution) Act of 1981 and the Protection of Environment Act of 1986 were both enacted with the use of power by parliament. The Preambles of both legislation show that they were adopted to carry out the decisions reached and decided at the United Nations (UNs) Conference on Human Environment in Stockholm in 1972.¹⁰

FUNDAMENTAL DUTIES:

Part IV A of the Indian Constitution, as amended by the Constitution (42 Amendment) Act of 1976, imposes a duty on all citizens to protect the environment. Article 51-A (g) states that "*every citizen of India shall have the duty to protect and improve the natural environment, including forests, lakes, rivers, and wildlife, and to have compassion for all living creatures.*"¹¹

In ***LK. Koolwal v. State of Rajasthan***,¹² the Court ruled that citizens had the right to move the Court to ensure that the State fulfills its environmental responsibilities. As a result, Jaipur's municipal

⁶ see, Union list, I.e list I

⁷ INDIA CONST. art 248, Residuary powers of legislation. Also see, entry 97 of list I

⁸ see, State and Concurrent list

⁹ INDIA CONST. art 253. Legislation for giving effect to international agreements.

¹⁰ VK. Agarwal, *Environmental Laws in India: Challenges for Enforcement*. 15, Bulletin of the National Institute of Ecology ,2005. https://www.sbsc.in/pdf/resources/1586097435_environmental_law.pdf.

¹¹ INDIA CONST. art 51-A(g).

¹² L.K. Koolwal vs State Of Rajasthan And Ors.,AIR 1988 Raj 2, 1987 (1) WLN 134

authorities were directed to clean up the city of all filth and dirt in order to provide hospitable living conditions for its residents.

The Indian constitution's Directive Principles are geared toward the development of a welfare state. One of the components of the welfare state is a healthy environment. Article 47 states that raising the quality of nutrition and standard of life of its citizens, as well as improving public health, are among the state's primary responsibilities.

The 42nd Amendment, India's most significant legislative move to safeguard the environment, included Article 48-A, which includes a provision for environmental preservation and suggests that a clean and healthy environment is now a mandate to state policy.¹³ The Supreme Court stated in *Sachidanand Pandey v. State of West Bengal*¹⁴ that "whenever a problem of ecology is brought before the court, the court is bound to bear in mind Article 48-A and Article 51-A." (g).

FUNDAMENTAL RIGHTS :

Part III of India's Constitution enumerates fundamental rights. Article 21 of the Indian Constitution ensures that "*no one shall be deprived of his life or personal liberty except in accordance with the procedure established by law.*"

Article 21 guarantees the right to life as a fundamental right. After the Supreme Court's decision in *Maneka Gandhi v. Union of India*,¹⁵ the right to a healthy environment has been given a liberal interpretation from time to time. The right to a healthy environment is an important component of the right to live with dignity. In the case of *Rural Litigation and Entitlement Kendra v. State of UP*¹⁶, the right to live in a healthy environment was first recognized as part of Article 21 of the Constitution. (Popularly known as Dehradun Quarrying Case).

The Supreme Court ruled in the *Charan Lal Sahu* case that Article 21 of the Constitution guarantees the right to life, which includes the right to a healthy environment. The court explicitly mentioned Article 21 in *T. Ramakrishna Rao v. Hyderabad Urban Development*,¹⁷ stating that the right to a clean environment is a fundamental right.

¹³ INDIA CONST. art 48A: Protection and improvement of environment and safeguarding of forests and wild life.

¹⁴ Sachidananda Pandey vs State Of West Bengal & Ors ,1987 AIR 1109, 1987 SCR (2) 223

¹⁵ Maneka Gandhi vs Union Of India ,1978 AIR 597, 1978 SCR (2) 621

¹⁶ Rural Litigation And Entitlement ... vs State Of U.P. & Ors 1985 AIR 652, 1985 SCR (3) 169

¹⁷ T. Ramakrishna Rao vs Chairman, Hyderabad Urban .,2002 (2) ALT 193

Noise pollution is a major problem in the contemporary generation. Article 19 (1) (a) of the Indian constitution, in connection with Article 21 of the constitution, provides the right to a decent environment and the right to live in peace. The Kerala High Court decided in *PA Jacob v. The Superintendent of Police Kottayam*¹⁸ that freedom of speech under article 19 (1)(a) does not include the right to use loudspeakers or sound amplifiers.

The court in *Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Association and Others*¹⁹ ruled that any religious exercise that disturbs children, the elderly, students, or the sick is prohibited. Humans, animals, and birds are all affected by noise pollution at the same pace. The fundamental right to life includes the right to live in a peaceful and calm environment, as well as the right to reasonable loudness, which must be taken into account in this circumstance.

Every citizen in India has a fundamental right to practice any profession or carry on any occupation, trade, or business, according to Article 19 (1) (g) of the Indian constitution. This is subject to some limitations. A citizen cannot engage in business if it poses a health risk to society or the wider public. As a result, environmental safeguards are built into the system.

In *Cooverjee B. Bharucha v. Exercise Commissioner, Ajmer*,²⁰ the Supreme Court stated that when environmental protection and the right to freedom of trade and occupation collide, courts must balance environmental interests with basic rights to carry on any occupation.

Equality before the law and equal protection under the law is guaranteed by Article 14 of the Constitution. Article 14 cannot be violated since it suggests that the state has a responsibility to act fairly when it comes to environmental preservation.

The judiciary has been severe in prohibiting arbitrary sanctions where state authorities have exercised arbitrary powers. It is a breach of the people's fundamental right to equality to employ discretionary powers without respect for the public good.

¹⁸ P.A. Jacob vs The Superintendent Of Police, AIR 1993 Ker 1

¹⁹ Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Association and Others ,A.I.R. 2000 SC 2773

²⁰ Cooverjee B. Bharucha vs The Excise Commissioner.,1954 AIR 220, 1954 SCR 873

CONCLUSION :

Our cultural ideas and customs include environmental conservation. Earth is our paradise, and it is our responsibility to safeguard it. The Indian constitution embodies the basis for environmental conservation and preservation, without which life cannot be enjoyed. Knowledge of constitutional provisions relating to environmental preservation is essential nowadays in order to increase public engagement, environmental awareness, and environmental education, and sensitize people to the importance of preserving the environment and ecology.