

Constitutional Provisions and the Environmental Protection

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ABSTRACT:

The essay on "Constitutional Provisions and Environmental Protection" explores the intersection between legal frameworks and environmental conservation. It delves into the constitutional provisions that empower governments to enact and enforce environmental laws, emphasizing the role of foundational legal documents in shaping environmental policies. The essay examines how constitutions of various nations include provisions that address environmental concerns. It analyzes the explicit and implicit directives within these legal documents that empower governments to safeguard the environment. The focus extends to the legislative framework derived from constitutional provisions. The essay explores how laws and regulations are formulated and implemented to address specific environmental issues, considering the dynamic nature of environmental challenges. An exploration of judicial decisions and interpretations related to constitutional provisions for environmental protection is a crucial aspect. The essay discusses landmark cases where the judiciary has played a pivotal role in interpreting and reinforcing environmental safeguards. In a global context, the essay may touch upon international agreements and conventions that guide nations in addressing trans boundary environmental issues. It discusses how constitutional provisions align with or contribute to global efforts for environmental sustainability. The essay critically assesses the effectiveness of constitutional provisions in meeting contemporary environmental challenges. It discusses potential shortcomings, areas for improvement, and opportunities for enhancing the legal framework to better address emerging environmental issues. The role of citizens in holding governments accountable for environmental protection is a vital aspect. The essay explores mechanisms within constitutional provisions that promote public participation and awareness in environmental conservation efforts. The essay underscores the symbiotic relationship between constitutional provisions and environmental protection. It aims to provide a comprehensive understanding of how legal frameworks, guided by constitutional mandates, shape environmental policies and influence the global commitment to sustainable development.

INTRODUCTION:

The constitution of India came into force on 26th January 1950. There are no specific provisions for environment protection in the constitution of India. In the Constitution (Forty

Second Amendment) Act, 1976,¹ some provisions are inserted in the constitution of India. The law of land which is the constitution of India has a binding force on all the persons i.e citizen, non-citizen as well as the state. Part-III and Part-IV of the constitution of India emphasize our national commitment to protect and improve the environment. The courts of India has also interpreted laws for environmental protection by touching the environmental prospective. By discussing the following heads, the constitutional provisions relating to protection and improvement of the environment may be explained clearly and widely.

1. Federal System of Government
2. Fundamental Rights
3. The Constitutional Forty Second Amendment.
4. Directive Principles of State Policy
5. Fundamental duties

1. Federal System of Government

There are three lists i.e the Union List or List-1, the State List or List- II, the concurrent List or List-III in the constitution of India for the distribution of legislative powers between the Union and the states as per Article 246. In concurrent list, there are 52 subjects over which both the parliament and state Legislature have the power to legislate.² By exercising this provision, parliament and state legislature have enacted 200 Legislations on environment protection. The important legislations on the subject matter of environment passed by the parliament under Article 249³ of the Constitution of India are The Water (Prevention and Control of Pollution) Act 1974, The Air (Prevention and Control of Pollution) Act 1981 and the Environment (Protection) Act 1986.

Article 254⁴ deals with Inconsistency between laws made by Parliament and laws made by the Legislatures of States. It states that If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void and Where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of

¹ [https://en.wikipedia.org/wiki/Forty-](https://en.wikipedia.org/wiki/Forty-second_Amendment_of_the_Constitution_of_India#:~:text=The%2042nd%20Amendment%20granted%20power,the%20Governor%20of%20the%20State)

² [second_Amendment_of_the_Constitution_of_India#:~:text=The%2042nd%20Amendment%20granted%20power,the%20Governor%20of%20the%20State](https://en.wikipedia.org/wiki/Forty-second_Amendment_of_the_Constitution_of_India#:~:text=The%2042nd%20Amendment%20granted%20power,the%20Governor%20of%20the%20State)

³ <https://indiankanoon.org/doc/1883579/>

⁴ <https://indiankanoon.org/doc/1930681/>

such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State: Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.⁵

Under the federal System of Government, central Government controls the finances to a great extent. Due to allocation of industrial project in a particular state, there may be some environmental impact in that state and the state environment and planning department of the state concerned. If there is any conflict between the development and environment, the conflict is being cared by the Environment Impact Assessment (EIA)⁶. This EIA has been acknowledged even by the Planning commission in its seventh Five Year Plan. Therefore, it is suggested that the administrative authorities, who are doing project should be compelled to follow the environmental laws from the beginning and avoid the conflict between development and environment.

2. Fundamental Rights:-

Part-III of the constitution of India deals with the Fundamental rights. Article 15 (2)⁷ of the Constitution Of India states that No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to (a) access to shops, public restaurants, hotels and palaces of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public. This right clearly states that the places which are part and parcel of the human environment shall be for the use of public. The preamble of the constitution of India emphasises socialistic society and best standard of life, which is being fulfilled in a pollution free environment only.

Article 21⁸ of the constitution of India States that “no person shall be deprived of his life or personal liberty except according to procedure established by law”. In the case of Rural Litigation and Entitlement Kendra V. State of U.P AIR 1988 SC 2187⁹, it is held that “this is the first case of its kind in the country involving issues relating to environment and ecological balance and the questions arising for considerations are of grave moment and significance not only to the people residing in the Mussoorie Hill range forming part of the Himalayas but also in their implications to the welfare of the generality of people living in the country. It brings into sharp focus the conflict between development and conservation and serves to emphasise the need for reconciling the two in the larger interest of the country.”

⁵ Lectures on Environmental law, 2nd Edition, by Dr. Rega Surya Rao

⁶ <https://www.cseindia.org/understanding-eia-383>

⁷ <https://indiankanoon.org/search/?formInput=article+15%282%29+of+constitution+of+india>

⁸ <https://indiankanoon.org/search/?formInput=article+21+of+indian+constitution>

⁹ ALL INDIA REPORT , <https://indiankanoon.org/doc/1949293/>

In the case of Intellectual Forum V. State of A.P. (2006) 3 SCC 549¹⁰, the Hon'ble Supreme court has held that environmental protection and natural resources conservation shall be treated as part and parcel of the Article 21 of the constitution of India.

In the case of M.C. Mehta v. Union of India AIR 1987 SC 1086¹¹ (Oleum Gas Leak Case), it is held that right to live includes pollution free environment.

In the case of M.C.Mehta v. Union of India AIR 1988 SC 221¹², it is held that right to live includes right of enjoyment pollution free water and air.

In the case of M.C. Meheta V. Kamal Nath AIR 2000 SC 1997¹³, it has been held that environment disturbances should not be disturbed because air, water and soil should not be hazardous.

In the case of Gulf Goans Hotels Company Ltd. V. Union of India (2014) 10 SCC 673¹⁴, it has been held that Violation of [Article 21](#) on account of alleged environmental violation cannot be subjectively and individually determined when parameters of permissible/impermissible conduct are required to be legislatively or statutorily determined under [Sections 3](#) and [6](#) of the Environment Protection Act, 1986 which has been so done by bringing into force the Coastal Regulation Zone (CRZ) Notification w.e.f. 19th February, 1991.

3. The Constitutional Forty Second Amendment:-

Article 48-A has been newly added in the Forty Second Amendment Act 1976 for protection of environment in the chapter of directive Principles of State Policy. In T.Damodhar Rao V. S.O.Municipal Corporation Hyderabad AIR 1987 AP 17¹⁵, it was held that environment protection is not only become a duty of citizens but also become an obligation of the state and its organs.

4. Directive Principles of State Policy

Part-IV of the constitution of India deals with the directive principles of State Policy. In the case of M.C..Meheta V. union of India and others (1997) 2 SCC 353¹⁶, Hon'ble Supreme Court has given direction to all the industries, which are nearer Taj Mahal cannot use coal as fuel. They will use Gas as fuel and as soon as possible, industries should be shifted and should be given incentives.

¹⁰ <https://indiankanoon.org/doc/1867873/>

¹¹ <https://indiankanoon.org/doc/1486949/>

¹² <https://indiankanoon.org/doc/59060/>

¹³ <https://indiankanoon.org/doc/111294/>

¹⁴ <https://indiankanoon.org/doc/198111315/>

¹⁵ <https://indiankanoon.org/doc/205063/>

¹⁶ <https://indiankanoon.org/doc/1904350/>

5. Fundamental duties-

Article 51-A¹⁷ of the constitution of India deals with the subject matter of the Fundamental duties. Article 51-A(g)¹⁸ states that it shall be the duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. Citizen are under obligation to do fundamental duties, which is enshrined under constitution of India. In the case of State of Tamilnadu v. Hind Stone AIR 1981 SC 711¹⁹, it has been held that Rivers, Forests, Minerals and such other resources constitute a nation's natural wealth. These resources are not to be frittered away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the Nation. It is recognized by Parliament. Parliament has declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals. Therefore, it is the obligation of the all the citizens to protect the environment for the survival of the human beings on earth.

CONCLUSION:

Our parliament should formulate legislation to take the subject matter of environmental pollution as a crime and should impose corporal punishment instead of fine and compensation because it directly affects the life of the citizens and right to life is a fundamental right of the constitution of India. Moreover, right cannot be fully protected and guaranteed, unless entire citizens of India recognizes their moral, ethical, social and constitutional duties which is enshrined in the Constitution of India.

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¹⁷ <https://indiankanoon.org/doc/867010/>

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