

LEGAL PROVISIONS FOR ENVIRONMENT PROTECTION

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Introduction

The seeds of legal provisions for environment protection could be seen in Article 47 of the constitution which commands 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.

The natural resources of the earth including the air, water, land, flora and fauna and especially representative sample of the nature ecosystem must be safeguard for the benefits of present and future generations through careful planning or management, as appropriate. Nature conservation including wildlife must therefore receive importance in planning for economic development. However, certain specific provisions have been incorporated by the Constitution (Forty second Amendment) Act, 1976 and subsequent amendments. Indian Constitution is one of the very few constitutions in the world, which provides for specific provision for the protection and improvement for the Environment.

The constitution, being the fundamental law of the land has a binding force on citizens, non-citizens as well as the State. The Fundamental Rights and the Directive Principles of the State Policy underline our national commitment to protect and improve the Environment. The courts in India have also given a new interpretation to the constitutional provision relating to protection and improvement of the environment (the intended meaning of the environment in the constitution) may be explained with reference to the following head:

1. The Constitution Forty Second Amendment.
2. Federal System of Govt. (Distribution of Legislative Power).
3. Fundamental Rights.
4. Directive Principles of State Policy; and
5. Fundamental Duties.

1. **Constitution Forty Second Amendment:-** In 1976, under the leadership of the Prime Minister, Smt. Indira Gandhi, the Constitution (Forty Second Amendment) Act was passed and the provisions relating to the protection of environment for the first time were incorporated by adding a new provision Article 48-A in the Chapter, Directive Principles of State Policy.

According to Article 48-A “the State shall Endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country”.

2. Federal System of Government (Distribution of Legislative Power):- From environmental point of view, allocation of legislative authority is very important. The constitution of India deals exhaustively with legislative powers pertaining to environmental law. The legislative powers under the scheme of the constitution is divided into three lists viz., the Union List or List-I, the State List or List-II, the Concurrent List or List-III. Part – XI (Arts. 245-263) of the constitution provides for the distribution of legislative between the union and the states. The most important environmental legislation, passed by the Parliament under Art. 249 of the Constitution are The Water (Prevention and Control of Pollution) Act, 1974; The Air (Prevention and Control of Pollution) Act, 1974; The Air (Prevention and Control of Pollution) Act, 1981; and the Environment (Protection) Act, 1986.

3. Fundamental Rights: - Part-III of the Constitution, containing Articles 12 to 35, deals with fundamental rights. Articles 15(2) (b); Art. 21 and Art.24 provide for specific provisions for environmental protection.

Article 15(2)(b):- According to Art.15(2)(b),it prohibits discrimination on the ground of sex, race, religion, caste, place of birth etc. to make use of the public places the general public. The public places, which are the part and parcel of the human environment, should be made available to the public. The preamble to our constitution ensures socialistic pattern of the society and decent standard of life, which can be pollution free environment.

Article 21:- According to Article 21 of the constitution,”no person shall be deprived of his life or personal liberty except according to procedure established by law”.

Article 24:- Article 24 of the Constitution speaks about exploitation of child labour. It says that “No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment” this provisions is certainly in the interest of public health and part of the environment.

4. Directive Principles of State Policy: - Part IV of the Constitution, Containing Articles 36 to 51, deals with Directive Principles of State policy. The Directive principles from the fundamental feature and are designed to achieve socio economic goals.

Article 47:-Art.47 provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. The improvement of public health also includes the protection and improvement of environment

without which public health cannot be assured.

Article 48:- (By the Constitution (42nd Amendment) Act, Section 10 (w.e.f.3.1.1977). Protection and improvement of environment and safeguarding of forest in wildlife). It deals with organization of agriculture and animal husbandry. Art.48 directs the state to take steps to organize agriculture and animal husbandry on modern and scientific lines. In particular, it should take steps for preserving and improving the breeds and prohibiting the slaughter of cows and calves and any other milch and draught cattle.

Article 49:- It deals with protection of monuments and places and objects of national importance. Art.49 requires the State to protect every monument or place or object of artistic or historic interest (declared by or under law made by parliament to be national importance) from spoliation, disfigurement, destruction, removal, disposal or export.

5. Fundamental Duties (51 –A):- Art. 51-A was added under the Constitution (42nd Amendment) Act. 1976, which deals with 'Fundamental Duties' under Part IV- Art. 51-A enlists ten fundamental duties designed for restricting and building a welfare of society and State.

Art.51-A (g):- Specifically deals with the fundamental duty with respect to environment. It provides "it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. (To put it simply Art.51-A (g) refers to the fundamental duty of every citizen to protect and improve 'natural environment'.

- **Responsibilities of the State Government towards Environmental Protection:-** The State's responsibility with regard to environmental Protection has been laid down under Article 48-A of our Constitution, which reads as follows, "The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country".

- **Responsibilities of the citizens towards Environmental Protection:** - Environmental Protection is a Fundamental duty of every citizen of this country under Article 51-A (g) of our constitution which reads as follows, "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".

- **Responsibilities of Panchayats towards Environment Protection:** - The Panchayats are assigned with the powers to perform such functions as mentioned in 29 subjects, in the Eleventh

Schedule of the Constitution. Among them, the following are related to environment.

i) Agriculture, including agriculture extension. ii) Minor irrigation, water management and water shed development. iii) Animal Husbandry, dairying and poultry. iv) Fisheries. v) Social forestry and farm forestry. vi) Minor forest Produce. vii) Rural housing. viii) Drinking water. ix) Fuel and fodder. x) Roads, culverts, bridges, ferries, waterways and other means of communication. xi) Non-Conventional energy sources. xii) Maintenance of community assets.

• **Responsibilities of Municipalities:-** The following subjects related to environment in the Twelfth Schedule of the Constitution are to be taken care of by the Municipalities (Nagarpalikas):-i) Urban Planning including town planning ii) Regulation of land use and construction of building . iii) Water supply for domestic, industrial and commercial and solid waste management. iv) Public Health, Sanitation conservancy and solid waste management .v) urban forestry, protection of the environment and promotion of ecological aspects .vi) Slum improvement and up gradation. Vii) Provision of urban amenities and facilities such as parks, gardens, playgrounds .viii) Cattle pounds; prevention of cruelty to animals. ix) Regulation of slaughter houses and tanneries.

Subject to the provisions of the Constitution, the legislature of a State will endow the Panchayats and Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self government.

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