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ENVIRONMENTAL PROTECTION & FUNDAMENTAL DUTIES: AN ANALYSIS

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Abstract

The main cause of environmental degradation is the human activity in one way or the other. Law is a regulator of human conduct. Hence, the law plays an important role in the protection of environment from pollution by regulating the human activities. Conscious state, environmental problems are generally handled at the legislature level. In India from time to time various laws for the protection of environment, flora and fauna have been enacted, but the Indian Constitution is perhaps the first constitution in the world which contains specific provisions for the protection and improvement of the environment. It reflects the human rights approach to environment protection through any environment various constitutional mandates. This paper is dealing with the Fundamental Duties and environmental Protection.

Key Words: Environment, Protection, Constitution, Duties, Citizens Etc.

1. Introduction

Environment Protection and its preservation is the concern of all. The environment is one of the clearest example of that all human activities on this earth are interconnected. Today society's interaction with nature is so extensive that environmental question has assumed all proportion affecting all humanity. Environmental destruction and pollution has seriously threatened the human life, health and livelihood.

India has always been aware of environmental protection since ancient times; hence it also ensures the protection of environment at the constitutional level. Earth is given the status of mother in our country. When the Constitution makers made the constitution, only the fundamental rights were given in it, and no express provisions were added in the name of Environment Protection. In 1976, through the 42nd amendment, Fundamental Duties were added to the Indian Constitution, initially duties were 10 but later it became 11. In relation to the fundamental duty provided in Article 51

'A' of the Constitution of India, it has been said that every citizen has an obligation to protect and protect their natural environment under which forests, lakes, rivers and wildlife are duty bound.

The Constitution of India obligates the "State" as well as "Citizens" to "protect and improve" the environment.¹ The example of the Indian Constitutional provisions regarding the environmental protection has been followed by other nations in the world. For example, the framers of the Constitution of South Africa were greatly influenced by the provisions relating to environment protection under the Indian Constitution and they have also incorporated the similar provisions in their constitution. In this Paper an attempt has been made to analyse the Fundamental Duties of Indian Constitution which are aimed at helping and protecting the environment.

2. Fundamental Duties and Environmental Protection

The Constitution (Forty-second Amendment) Act, 1976, added a new Part IV-dealing with "Fundamental Duties" in the Constitution of India². Article 51-A deals with fundamental Duties in this Part originally ten duties in number, the fundamental duties were increased to eleven by the 86th Amendment in 2002, which added a duty on every parent or guardian to ensure that their child or ward was provided opportunities for education between the ages of six and fourteen years. It is interesting to note that this Part was added on the recommendations of the *Swarn Singh Committee* bringing the Constitution of India in line with article 29(1) of the Universal Declaration of Human Rights³. Article 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". Article 51-A (j) further provides: "It shall be the duty of every citizen of India to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievements".

¹ See Articles 48-A and 51- A (g) of The Constitution of India.

² See Section 11 of the Constitution (Forty Second Amendment) Act, 1976.

³ Article 29 of the Universal Declaration of Human Rights Provides: "Everyone has duties to the community in which alone the free and full development of his personality is possible".

The fundamental Duties are intended to promote peoples' participation in restructuring and building a welfare society. The protection of environment is a matter of constitutional priority. The problem is the concern of every citizen. Neglect of it is an invitation of the disaster.⁴

Article 51-A (g) refers to the fundamental duty of every citizen to protect and improve "natural environment". But in the present days the pollution is caused not only by exploiting the "natural environment" but otherwise also. In modern industrialised civilisation such a concept may seem to be a misnomer. It is submitted that the word "natural" before environment has to be understood in broad sense. Nature has given us the gift of pollution free environment. The fundamental duty imposed on every citizen is not only to "protect" the environment from any kind of pollution but also to "improve" the environment quality if it has been polluted. Thus, the underlined emphasis of this fundamental duty is that every citizen has a duty to make an endeavour to preserve the environment in the same way as nature has gifted it to all of us.

Under article 51-A, only "citizens" are under the obligation of fundamental duties. The Parliament has used the word "citizen" instead of the word 'subject' to create a feeling of citizenship amongst the masses and also to see that the persons living in the country do not feel that they are subjects. We used to be the subjects prior to independence, but now we have ceased to be subjects and now we are the citizens of the Country. The requirement of the time is that we should be real citizens of the country striving towards excellence in all spheres of individual and collective activity including the protection of environment.⁵

Now coming to the question of ensuring the compliance of these fundamental duties. when these fundamental duties were incorporated in the Constitution in 1976. It was considered that the fundamental law of the land reminds the citizens of their constitutional obligations. They couldn't be directly enforced. However, in due course of time the judicial activism provided an impetus to achieve the underlined objectives of the fundamental the duties, particularly, Article 51-A (g) relating environment.

The true scope of article 51-A(g) has been best explained by the Rajasthan High Court in *L.K. Koolwal v. State*⁶ The brief facts of this case were that the Municipal authority under the Rajasthan

⁴ *V. Lakshmi pathy v. State*, AIR 1992 Kant. 57.

⁵ *L.K Koolwal v. State*, AIR 1988 Raj. 2.

⁶ *Ibid.*

Municipalities Act. 1959, was charged with "primary duty" to clean public streets, places and sewers and all spaces, not being private property, which are open to the enjoyment of public, removing of noxious vegetation and all public nuisance, and to remove filth, rubbish, night soil, odour or any other noxious or offensive matter. Mr. L.K. Koolwal moved the High Court under article 226 (writ jurisdiction) and highlighted that the Municipality has failed to discharge its "primary duty" resulting in the acute sanitation problem in Jaipur which is hazardous to the life of the citizens of Jaipur.

The Court allowed the petition and explained the true scope of article 51-A in the following terms:

“We can call Article 51-A ordinarily as the duty of the citizens, but in fact it is the right of the citizens as it creates the right in favour of citizens to move to the Court to see that the State performs its duties faithfully and the obligatory and primary performed in accordance with the law of the land. Omissions or commissions are brought to the notice of the Court by the citizen and thus, Article 51-A gives a right to the citizens to move the Court for the enforcement of the duty cast on State, instrumentalities, agencies, departments, local bodies and statutory authorities created under the particular law of the State”.

The Court also pointed out that "right and duty co-exists. There cannot be any right without any duty and there cannot be any duty without any right." Insanitation leads to a slow poisoning and adversely affects the life of the citizens and hence it falls within the purview of article 21 of the Constitution. Therefore, it is the duty of every citizen to see that rights which he has acquired under the Constitution as a citizen are fulfilled.⁷

The Court appreciated the action of the petitioner who like a real citizen, highlighted the problem of the city and brought to the notice the conditions which were hazardous to the life of citizens. The Court directed the Municipality to remove dirt, filth etc. from the city within the period of six months. The Court made it very clear that it is not the duty of the Court to see whether the funds are available or not. It is the duty of the Administration and Municipal Council to see that the primary duties are fulfilled.

The Court concluded the judgment by observing that-"If the Legislature or the State Government feels that the law enacted by them cannot be implemented then the Legislature has the liberty to

⁷ *M.C Mehta. v. State*, AIR 1992 Ori. 225.

scrap it, but the law which remains on the statutory books will have to be implemented, particularly when it relates to primary duty."24 There is a catena of cases where Article 51-A(g) has been considered along with Article 48-A as implicit in article 21 of the Constitution.

In *Nature Lovers Movement v. State of Kerala*,⁸ there was diversion of forest land against which a public interest litigation was filed. The Government orders laid down conditions to regulate exploitation of environment and natural resources but it did not impose total prohibition in the matter of enjoyment of environment. There was adjustment and reconciliation between the preservation of environment and development of economy. The Court held that all the steps taken by the Central Government as per the said orders did not stand against the concept of sustainable development and environment protection. Consequently, it was held that the orders of the Government of India and consequent steps for the issue of title deeds to occupants/encroachers were not opposed to article 48-A or 51-A of the Constitution.

In *Goa Foundation v. State of Goa*,⁹ the Bombay High Court examined the question of *locus standi* from the premises of the fundamental duties under the Constitution of India. In this case the petitioner was a society registered under the law relating to registration of societies and their members were citizens of India having fundamental duty under article 51-A to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. The question before the court was whether such a society also has the same duties. The court answered this question in affirmative and held that such a society also has the same duties. On the basis of this, the petitioner society was held to have a *locus standi* to move to the court to prevent ecological degradation, programmes for rehabilitation of environment and to restore ecological balance. If protection and improvement of the environment is a constitutional duty of every citizen, there is hardly a need to impose restrictions or limitations on public interest litigation in the area of environment litigation.

In *Sitaram Chhaparia v. State of Bihar*,¹⁰ a public interest litigation was filed by five persons, residents of locality seeking directions from the court for closure of tyre retreading plant set up in residential area as the said industry was emitting carbon dioxide gas and other obnoxious gases

⁸ AIR 2000 Ker. 131.

⁹ AIR 2003 Bom. 318.

¹⁰ AIR 2002 Pat. 134.

from its furnaces causing harm to the environment of the locality. The Patna High Court held that protecting the environment is now a fundamental duty under article 51-A of the Constitution of India and accordingly the respondents were directed to wind up their industry and the State respondents were obliged to ensure that duty.

In case of *M.C Mehta v. Kamal Nath*,¹¹ the Hon'ble Supreme Court has rightly pointed out that Article 48-A and 51-A (g) have to be considered in the light of Article 21 of the Constitution which provides no person shall be deprived of his life and personal liberty except according to the procedure established by law. Any disturbance of any of the element of the environment namely air, water and soil, which are necessary for 'life', would be hazardous for 'life' within the meaning of the Article 21.

3. Conclusion

History witness that in India, love of environment was a style of life. People sacrificed their lives to protect trees and plants, but now people's priorities have started changing. He has been influenced by the consumerism of the modern era. Today, not only in India, but in the whole world, the race for human development has moved so much that it has no time to look towards its environment. But we should not forget that we have to live on earth. We have to follow all the measures given in the constitution and in other specific laws; otherwise it will be difficult to save the environment. To achieve the goal of environmental protection which is mentioned under the Constitution of India, the people and the courts should perform their duty to protect the environment because it's not only their legal duty but a moral obligation on them.

¹¹ (1997)1 SCC 388