



FACULTY OF JURIDICAL SCIENCES

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NAME OF FACULTY: Mohammad Aqib

Lecture-11



LECTURE 11: Constitution and Environment

The United Nations Conference on Human Environment held on in June, 1972 at Stockholm placed the issue of the protection of biosphere on the official agenda of international policy and law. The agenda of the conference consisted of the following:

- (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 aspects of environmental issues.
- (e) Development and environment.
- (f) International organizational implications of action proposals. The Stockholm Conference agendas, proclamations, principles and subsequent global, environment protection efforts shows the words realization of the need to preserve and protected the natural environment. The conference acclaimed man's fundamental right to adequate conditions of life in an environment of a quality that permitted a life off dignity and well-being.

In United Nations Conference on Human Environment, at Stockholm the then Prime Minister of India Mrs. Gandhi while displaying the nations commitment to the protection of environment, said.

“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. Natural conservation including wildlife must therefore receive importance in planning for economic development”.

To comply with the principles of the Stockholm Declarations adopted by the International Conference on Human Environment, the Government of India, by the Constitution 42 Amendment Act, 1976 made the express provision for the protection and promotion of the environment, by the introduction of Article 48A and 51A (g) which form the part of Directive Principles of State Policy and the Fundamental Duties respectively. The amendment provided for the following:

- (1) Article 48A: By the Constitution (42nd Amendment) Act, Section 10 Protection and

improvement of environment and safeguarding of forests and wildlife

“The State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country”. Fundamental Duty:

(I) Article 51-A (6): By Constitution (42nd Amendment) Act, 1976.

“It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures”. Thus 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 owes a constitutional duty to protect and improve natural environment. In protecting the natural environment, the 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 Indian Constitutional set-up. Hence the above provisions are of pivotal significance. The Government of India to accelerate the pace for environment protection further amended the constitutional text by making the following changes.

1. Seventh Schedule of the Constitution:

(1) In the concurrent list, 42nd Amendment inserted.

(a) Entry 17-A, providing for forests.

(b) Entry 17-B, for the protection of wild animals and birds.

(c) Entry 20-A, providing for population control and family planning.

2. Eleventh Schedule of the Constitution

(1) This new schedule is added by the Constitution 73rd Amendment Act, 1992, which received assent of the President on 20.4.1993. This schedule has 8 entries (2, 3, 6, 7, 11, 12, 15 and 29) providing for environmental protection and conservation.

3. Twelfth Schedule of the Constitution

(1) The entry number 8 of this schedule added to the constitutional text by the 74 Amendment Act, 1992, which received assent of the President on 20.4.1993 provides for the Urban Local bodies with the function of environment and promotion of ecological aspect to them. Due to the

above changes the division of legislative power between the Union and the States is spelt out in the following three of the 7th Schedule of the constitution.

List I (Union List) Entries

- 52. Industries
- 53. Regulation and development of oil fields and mineral oil/resources.
- 54. Regulation of mines and mineral development.
- 55. Regulation and development of inter-state rivers and river valleys.
- 56. Fishing and fisheries beyond territorial waters.

List II (State List) Entries

- 6. Public health and sanitation.
- 14. Agriculture protection against pest and prevention of plant diseases.
- 18. Land colonization etc.
- 21. Fisheries.
- 23. Regulation of Mines and Mineral development subject to the provisions of
- 24. Industries subject to the provisions of

List III (Common or Concurrent List) Entries

- 17-A. Forests
- 17- B. Protection and wild animals and birds
- 20. Economic and social planning
- 20A. Population control and family planning

The Eleventh Schedule, added to the Constitution by the constitution 73rd Amendment Act, 1992, assign and functions of soil conservation, water management, social and form forestry, drinking water, fuel and fodder, etc. to the Panchayats with a view to environmental management. 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 42 Amendment Act, 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 item 'forests' now in the concurrent list by the entry 17A, 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 virtue of this change Parliament also enacted, the central legislation Forest Conservation Act, 1980, which was amended in 1988.

The government also adopted the new National Forest Policy in 1988 with a twin object. One to protect the forests and another to consider the needs of the forest dwellers. Similarly the insertion of the entry 20A in the concurrent list empowers the Parliament to regulate the population explosion, one of the prime causes of the environmental pollution. By these changes, legally and constitutionally it has become possible to take a uniform action in the matters of proper management of the environment.

Fundamental Rights

The judiciary dynamic interpretations of fundamental rights have regulated into it the rights to healthy environment from the following Articles:

- (a) Article 14: "State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."
- (b) Article 19 (6): State is empowered to make any law imposing in the interests of the general public, reasonable restrictions on the exercise of freedom to practice any profession, or to carry on any occupation, trade or business guaranteed by (1) (g).
- (c) Article 21: "No person shall be deprived of his life or personal liberty except according to procedure established by law".