

## Protection and Development of Environment: A Constitutional Accountability

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### ABSTRACT

Natural resources of India were enormously exploited to feed the industrial activities, and for fulfilling the requirement of two World Wars by Britishers just before framing the Constitution. The environment was *thus* sufficiently degraded, There could never be a belief that the prospects and well-being of a country and its citizens are closely linked to the abundance of environment. The Constitution was unable to take necessary action to hold itself accountable for improving a damaged environment. And constitutional experiment went ahead with sacrosanct engineering design. To begin with, all the objectives cannot feasibly be comprehended. Some of them are set apart according to priorities and perception of the situation either prevailing or contemplated in near future. At times, even though some of the contingencies are visualized, they don't get priorities on national agenda, as others are considered to be more pressing and emergent. In view of this situation, the author felt interested to take up this aspect for a closer scrutiny to find out the Constitutional Accountability and to evaluate the overall role of Governments to Environmental Protection and Development after Independence.

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### GENERAL

Since the country after considerable period and struggle, relived from the British rule, assertion of sovereignty had first priority, as indication of future pattern of governance of nation and its sovereign people as democratic republic, was utmost necessary.<sup>1</sup> On the line of the Preamble to Constitution of

India, welfare of people has to be secured by informing justice, to all institutions of national life.<sup>2</sup> Welfare of the people could be something besides relevance of environment. Social order explicitly excludes order of nature or environmental order. In no Constitutional Experiment, nation and its people could be assured with certainty, promising future unless along with history and geography, tradition, heritage and religious culture have adequately been adverse to.<sup>3</sup>

### **HISTORICAL -TRADITIONAL PERSPECTIVE**

In the primitive stage, worship of nature was not out of fear of unknown, but owing to deep reverence to the kindness for creation, growth and sustenance, human being owed to 'Mother Earth'. It had been imbibed into ancient culture of this sub- continent. *Atharva Veda*, the ancient scripture announced that earth is the paradise of man, which has been blessed with nature's bounties. Men, *therefore*, not necessary to mythologically follow heaven to another location and be completely enslaved to resources of nature as well as Earth. Saints and monks transmitted throughout the message of ancient scriptures. *Mahaveer* and *Gautam Buddha's* teachings reinvigorated priceless equation of nature's attitude toward humans. The renowned *Saint Tukaram* spread idea that plants and trees are our family in 15<sup>th</sup> century.<sup>4</sup> Moreover In 1913 at Harvard University, Gurudev Rabindra Nath Tagore explored that Upanishads and teaching of *Gautam Buddha* depict vitality of relationship between nature and human beings. According to *Gandhi ji*, human spirit is found in nature. According to Pandit Jawaharlal, our history, beliefs, customs, as well as worship have all included the Himalayas. Never the mountains, rivers, forests, etc. had mere geographical significance. They had articulated way of life and thinking of mankind. River and valley have been held to be cradles of civilization. *Predominantly*, India had a rural base with agro economy. And that had been complimentary to nature's benevolence. 85% of population till independence had habitat in rural area. This rural base was the backbone of ancient culture. That maintained intimate relationship with ardent in ecological supremacy. India's legendary cultural heritage preserved and flourished till before First World War. The war besides destruction introduced several anti environmental phenomena. After Second World War, India Attained independence, Sovereign people gave the Constitution to themselves.<sup>5</sup>

### **CONSTITUTIONAL ENVIRONMENTALISM AND LEGISLATIVE RESPONSE**

The Constitution broadly sanctions to build up modern India by material developments. Independent India undertook five year plans and carried out massive material developments. Certainly it involved destruction of considerable natural resources and nature became the first victim. 'We the people' had been hypnotised by man's power to mould the nature. One German philosopher had a vision, who

cautioned that let us not to flatter over our victories over nature. For each such victory, nature takes revenge on us. After independence and commencement of the Constitution, NFP, 1952 (National Forest Policy) proclaimed that national interests ought not to be subordinated to concerns of communities residing in and around forests. The destruction of forests to make way for road, irrigation, and hydroelectric projects and industries had been supported by national interests.<sup>6</sup> Meanwhile, due to exemplary actions that UNO took at various successive International Conferences, commencing from that held in Stockholm in 1972<sup>7</sup> to that held in Johannesburg in 2002,<sup>8</sup> the primary responsibility of prevention, control and abatement of environment is reposed on the individual States with due awareness and collective efforts of their citizens. *Consequently*, it is now universally recognized that exploitation of natural resources in a *sine qua non* for economic development and such exploitation should be allowed up to such point at which both the environment and the human society can sustain not only in present but also in future. This phenomenon is named as “Doctrine of Sustainable development”. It is based upon two principles, namely, “Precautionary Principle” and “Polluter Pays Principle”.

Simultaneously, in response to Stockholm declaration, 1976 saw ratification of 42nd Constitution Amendment. Indian Constitution outlines country's commitment to environmental protection in Directive Principles of State Policy. Directive Principles' Article 48-A declares in addition to protecting as well as improving environment, state have to make effort to uphold country's forests alongside animals. Additionally, protecting environment is a core civic duty. Article 51 -A(g), each and every Indian citizen had obligated obligation to safeguard as well as enhance nation's natural environment, which includes its lakes, wildlife, rivers, forests, along side having sensitivity to all living creatures.<sup>9</sup>

The task of environmental protection wasn't delegated to any policy-making body until 1980, nevertheless. Established in 1980, the “Ministry of Environment and Forests”(MoEF) serves as central government's primary hub in organizing, promoting, as well as coordinating environmental initiatives. In general, the Integrated “Environmental Protection Act” (EPA) 1986 contains current statutory framework. Nonetheless, there are some laws that affect the environment either directly or indirectly, like “Indian Forest Act” 1927, “Indian Boilers Act” 1923; “Wild Life Protection Act” 1972; “Water (Prevention and Control of Pollution) Act” 1974; “Water Cess Act” of 1977, “Forest (Conservation) Act,” 1980; “Air (Prevention and Control of Pollution) Act” 1981; “Public Liability Insurance Act,” 1991; “National Environment Tribunal Act” of 1995, Biodiversity Act, 2002; and others.<sup>10</sup> Although environmental conservation is not primary goal of the majority of these Acts, they do contain provisions for indirectly reducing environmental damage.<sup>11</sup> NFP 1988, National Conservation Strategy and Policy

Statement on Environment and Development, 1992; as well as Policy Statement on Abatement of Pollution, 1992 all provide an overview of present national environmental management policies. National Water Policy, 2002 is one example of sector policy that had made environmental management easier. Despite these policy texts, it remains clear that a comprehensive policy statement must be developed to create integrated strategies in several sectoral as well as cross-sectoral strategies for environmental management, including financial ones. Concerns regarding sustainable development, particularly in relation to the increase of human well-being in a broad context, are a persistent subject in India's approach to development. Achieving this necessitates equilibrium and concord among social, environmental, as well as economic, requirements of nation. India performs crucial part in some big worldwide environmental efforts. It is a signatory to essential multilateral accords and acknowledges the interconnections and transboundary nature of various environmental issues.

Our national commitment to a clean environment, which had reinforced by judicial interpretation of Article 21 and mandated by Articles 48A as well as 51A(g) of Constitution, is also reflected in NEP (National Environment Policy) 2006. It's acknowledged that everyone had responsibility to maintain wholesome surroundings, not just the state. Therefore, a collaborative approach should be implemented across the nation's environmental management spectrum. NEP, 2006 meant to serve as declaration of India's resolve to positively impact global endeavors.<sup>12</sup> *Regretfully*, the current state of affairs is completely contrary to what one might anticipate from long-standing customs and even more recent declarations in the Indian Constitution.<sup>13</sup>

## CONCLUSION

Following 1972 UNs Conference on Human Environment in Stockholm, India began to place a strong emphasis on the environment. Given its international commitment to safeguard along with maintain environment as well as prevent global warming, India's NEP of 2006 and its (NAPCC) "National Action Plan on Climate Change" of 2008 are commendable policies. All policies are only as good as how they are put into practice. The Cabinet or a designated Cabinet Committee may therefore be asked to examine the NEP's execution annually, 3 months after preceding fiscal year's conclusion. To reassure stakeholders of government's commitment to ensuring policy implementation, the review's conclusions ought to be made public. In this regard, the creation of an organization akin to the US Environmental Protection Agency is both imperative and very desirable. To enhance their environment, citizens must also be more aware of their basic responsibilities.

**Endnotes**

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- <sup>1</sup> On 26<sup>th</sup> November 1949, we the people resolved to constitute India into ‘Sovereign Democratic Republic’. See the Preamble to the Constitution of India 1950.
- <sup>2</sup> Article 38, the Constitution of India.
- <sup>3</sup> *Infra* at 163.
- <sup>4</sup> Ashok A. Desai, “Constitutional Accountability Towards Environment” 42 *JILI* 160-161 (2000).
- <sup>5</sup> Dr. L.M. Singhvi, a Eminent Indian Jurist believes that the value system of Gandhi ji and provision of the Constitution derived their spiritual and moral inspiration from the composite Indian Culture. *Id* at 162.
- <sup>6</sup> S. Shanthakumar, *Introduction to Environmental Law 2* (Wadhwa and Company, New Delhi, 2<sup>nd</sup>edn., 2007).
- <sup>7</sup> The first U.N. (International) Conference on Human Environment was held from 5 to 16 June 1972 in Stockholm declared hat ‘to defend and improve the human environment for present and future generation has imperative goal for mankind. 26 principles were resolved in the Conference which are known as the Magna Carta on Human Environment. Indian was one of the signatories of this Conference.
- <sup>8</sup> Earth Summit was held at Johannesburg, South Africa, from 26th August to 4th September 2002. It was the consequential follow up action of the decision of the Earth Summit 1992. Johannesburg conference confirmed that significant progress has been made towards achieving a global consensus and partnership amongst all the people of our planet. Over 4000 delegates from about 100 countries participated in it. Stockholm Convention 2004 was held on May 17<sup>th</sup> aims at phasing out 12 dangerous pesticides and industrial pollutants. More than 150 countries have signed it and about 60 have ratified it.
- <sup>9</sup> Part IV, *the Constitution of India*.
- <sup>10</sup> The National Environment Appellate Authority Act, 1997, the National Green Tribunal Act 2010, etc.
- <sup>11</sup> V.S. Vyas and V. Ratna Reddy, “Assessment of Environmental Policies and Policy Implementation in India” 33 *Economic and Political Weekly* 49 (1998).
- <sup>12</sup> Kailash Thakur, *Environmental Protection Law and Policy in India* 423-470 (Deep & Deep Publication, New Delhi, 2008).
- <sup>13</sup> S. Shyam Sundar, “Wildlife Conservation and Forestry: Concerns and Policy Developments in India” 74 *CWFR* 35 (1995).