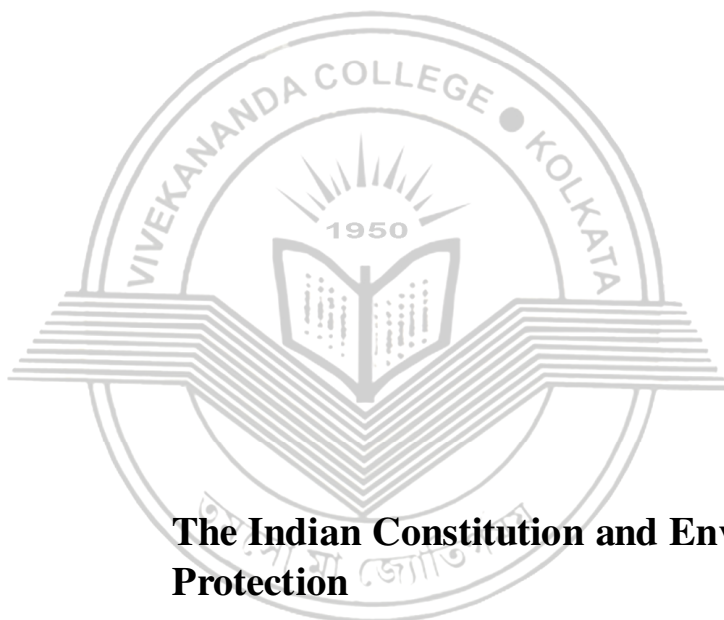


**VIVEKANANDA COLLEGE
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NAAC ACCREDITED 'A' GRADE



Topic: **The Indian Constitution and Environmental Protection**

Course Title: Environmental Science (Hons.)

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The Indian Constitution and Environmental Protection

The constitution is known as the basic law of the land from which all other laws derive their sanctity and validity, hence it must be able to cope with the newer situations and development and grow accordingly. The constitution of India, as adopted in 1950 did not deal with 'Protection of Environment' as a specific legislative subject and did not even have any commitment for the protection and preservation of environment. However, it contained and still contains several related subjects like forest, wildlife, population control, public health and sanitation, agriculture, fisheries, land, water, atomic energy, interstate rivers, mines etc. in its constitutional scheme of distribution of legislative powers.

In 1972, the then Prime Minister of India, Mrs. Indira Gandhi, was the first Head of State to address in the UN conference on Human Environment, otherwise known as Stockholm Conference, and voiced deep concern about the environmental degradation and eco-imbances. She also emphasized on the interrelationships of pollution population and poverty. Eventually, the conference was the first International meet to discuss environment as the sole issue, and India became one of the first country with a concern over environmental protection. India was also one of the signatories of Stockholm declaration known as *Magna Carta* on Human Environment. Thereafter, to fulfil its commitment the Indian Parliament passed the 42nd Amendment to the constitution in 1976 and incorporated specifically two Articles – *Article 48A* and *51A (g)*, relating to environmental protection and improvement. Further it introduces certain changes in the seventh schedule of constitution, which are as follows:

Article 48-A: *Protection and improvement of environment and safe guarding forest and wildlife, to be read as* – The State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country.

Article 51-A: *Fundamental duties, to be includes as* – It shall be the duty of every citizen of India –

- (g) to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.

The various entries i.e., 17A – Forest, 17B – Protection wild animals and birds, 20 A – Population control and family planning , of earlier List II of Seventh schedule were transferred to List III, so that the Parliament can legislate the environmental issues related to these entries. It has been instrumental in bringing uniformity in environmental law throughout the country.

It is to be noted that the Article 48A & 51A(g), are placed in the Part IV of the constitution of India, titled “**Directive Principles of State Policy**” . While Article 48A imposes a constitutional obligation on the State, Article 51A (g) enjoins all the Indian citizens to protect the environment. On careful consideration of the amendment with focus on the import and importance of those two Articles of Constitution of India, Justice A.R.Lakshmanan observed: *These two Articles are not only fundamental in the governance of the country but also it shall be the duty of the State to apply these principles to making laws and further, these two articles are to be kept in mind in understanding the scope and purport fundamental rights*

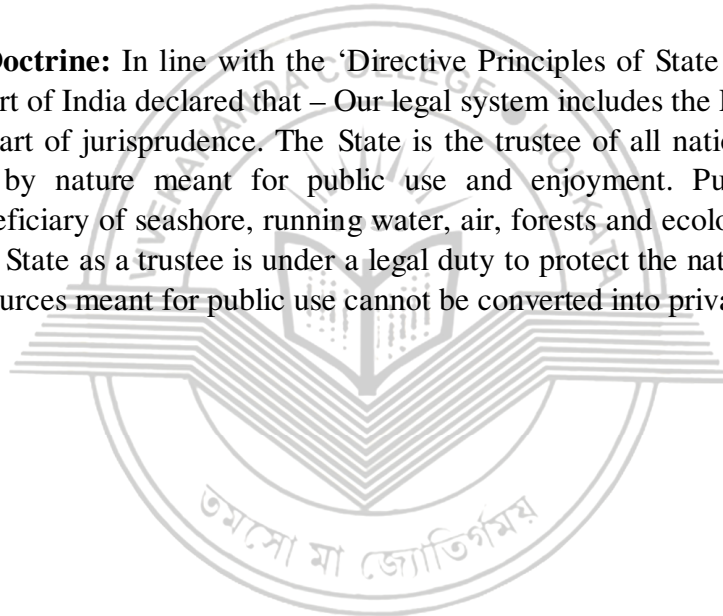
guaranteed by the Constitution of India and also the various laws enacted by the Parliament and the State legislature.

Therefore, the amendment opens up the scope of enactment of different legislative tools to safeguard the environment and its components. It also provides the constitutional scheme for the concept of 'sustainable development' in the country by outlining the social and economic development within the larger framework of environmental protection strategy. In fact it creates the scope to strike a balance between the development and sustainable development.

The Directive Principles of State also have another Article, i.e. Article 47, that paved the way for sustainable development and may be considered as a constitutional provision for protection of the Environment.

Article 47: *Duty of the State to raise the level of nutrition and standard of living and to improve the public health, to be read as – The State shall regard the raising of the level of nutrition and standard of living of its people and the improvement of public health as among its primary duties.*

Public Trust Doctrine: In line with the 'Directive Principles of State Policy' the Supreme Court of India declared that – Our legal system includes the Public Trust Doctrine as part of jurisprudence. The State is the trustee of all national resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of seashore, running water, air, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.



Some Specific Principles of The Constitution of India

(Those can be used to protect and improve the Environment directly or indirectly)

Right to Live of Endangered species and Obligation to save them: The Article 21 of the Constitution of India protects not only the human rights but also cast an obligation on human to protect and preserve a species becoming extinct, conservation and protection of environment is an inseparable part of right to life.

Right to Pollution Free and healthy environment: The constitutional scheme to protect and improve environment (i.e. Article 48 A & 51A (g)) includes fundamental right to have healthy and pollution free environment. As per the observation of Honb'l Supreme Court of India, this scheme is based on the 'constitutional policy of sustainable development which must be implemented'.

Precautionary Principle: this is a rule of evidence and particularly it deals with the burden of proof in Environmental cases. This principle shifts the burden on the polluter – individual or industrialists or entrepreneur – to prove that his activity is not a health hazard, damaging the environment and its action is environmentally benign. This principle of Indian constitution rooted out of the concept of *Assimilative Capacity* from Principle 6 of Stockholm Declaration of 1972.

The introduction of Environmental Impact Assessment Notification, 1994 & 2006 etc. under the scope of Environment (Protection) Act, 1986 as a pre-requisite for environmental clearance of any project activities in India may be considered as an application of this principle.

Polluter Pays Principle: In line with the precautionary principle used by the judiciary, this 'Polluter Pays Principle' was introduced to give remedial relief to check and control environmental degradation. Thus it has become a part of the principle of sustainable development. In a legal proceeding in Indian Council for Enviro-legal action vs. Union of India, the principle was explained as :

Once the activity carried on is hazardous or inherently dangerous, the person carrying on the activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity.

- a) The polluting industry is absolutely liable to compensate for the harm caused to the environment.
- b) He is also liable to pay the cost of restoring the environmental degradation – reversing the damaged ecology.

This principle means the '**Absolute Liability**' for harm to the environment. Thus it became a principle of remediation of damaged environment – a part of the process of sustainable development.

Books and Materials Consulted:

Shastri, S.C. Environmental Law, 6th Edition, *EBC Explorer*. 2018.

Venkat Aruna. Environmental Law and Policy. *PHI*, 2011

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