



## A LEGAL INSIGHT IN CONSTITUTIONAL PROVISIONS IN INDIA

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### ABSTRACT

*India is actually a contemporary state which has recognized the idea of 'welfare state'. Hence it's to work for the welfare of the common public. It's the performance of the State to build a merely social order by enacting only laws as well as by offering equal chance to other to develop. The constitution of ours isn't an inert but has cultivated as well as developed through the years. In the Indian situation, environment safety hasn't simply been raised to the condition of essential law of the land, though it's additionally been webbed with human rights strategy and it is currently considered as a well established fact that it's the fundamental human right of every individual.*

### **I. INTRODUCTION**

A constitution consists of a set of norms (rules, concepts or maybe values) producing, structuring, and perhaps defining the boundaries of, government power or perhaps authority. Known with this way, all states have constitutions as well as most states are actually constitutional states. Anything recognizable as a state should have several ways of constituting as well as specifying the boundaries (or maybe lack thereof) placed upon the 3 fundamental types of government power: legislative power (making brand new laws), executive power (implementing judicial power and laws) (adjudicating disputes below laws). Independence of Judiciary is vitally important in a democratic state. Judiciary shouldn't be accountable and answerable to parliament because India uses the concept of separation of powers. In India, if any law is available in the right way to preserve

constitutionalism, it's declared unconstitutional." and invalid.

The Indian Constitution is founded on the philosophy of evolving an egalitarian society totally free of fear as well as bias based on promoting individual freedom in shaping the government of the choice of theirs. The entire basis of constitutional democracy is actually making a method of governance in systematic machinery working instantly on the wheels of regulations and norms although not on specific whims and fancies. It's simple to dream such a process of rule of law than framing a mechanism for this.

The Indian Constitution is actually a marathon attempt to translate philosophical rule of law into functional set up split into 3 considerable estates checking one another working out parallel sovereignty as well as non egoistic supremacy in the own way of theirs. Apart from great separation of



powers to stay away from the complete awareness, the Constitution of India envisages an unique distribution of powers between 2 main ph levels of Governments main as well as provincial with a good range for a third tier - the nearby systems. Nevertheless, the functioning of the device arrived in comparison with males as well as their manipulations leading to indifferent choices and various opinions. Whatever could be the consequential aberrations, the device of rule of law is properly mirrored in framing of the Constitutional norms codifying probably the very best governing mechanisms tested as well as trusted in different democratic society's world over.

## II. FRAMEWORK OF CONSTITUTION

### What's Constitution?

It's in a nutshell, a rule of guide of a nation, codifying rule of law. Constitution is actually a legitimate document having a specific authorized sanctity, which sets out the framework as well as the principal features of the organs of the federal government of a state, and declares the concepts governing the functioning of those organs. Similar to every other Constitution, the Indian Constitution also seeks to set the basic organs of administration and government, lays down the framework of theirs, composition, powers as well as principal features, describes the inter relationship of one organ with another, as well as adjusts the connection between the state as well as the citizen, more especially

the political connection. The states have reasserted particular concepts of law via written Constitutions. Being a democratic Constitution, the Indian masterpiece additionally reflects the basic political values in substantive methods by guaranteeing Fundamental Rights to the citizens, and also in procedural methods by providing cures. It reflects simple values regarding that shall govern, and also in what course. Constitution means the framework of a body, organization or organism, or maybe we are able to additionally say, what constitutes it or maybe just what it consists of. Given that the nation is actually among probably the biggest in the world with the majority of varieties of the cultures and also the people, India needs an expressly written code of governance, much more precisely when the folks decided to have various institutes, estates, amounts and mechanisms of sovereignty. And hence we've probably the longest written constitution, that is among the important options that come with democratic federation.

### Features of the Constitution

The Constitution is actually a political framework, whether it's created or perhaps not and followed or not. They've a number of features.

- a) Expression of Ideology: it mirrors the ideology as well as philosophy of a nation state.
- b) Expression of Basic Law: Constitutions contained simple laws



which may be modified or even replaced from a procedure known as very typical process of amendment. There's a unique law too which typically focus upon the rights of the citizens, for example, rights regarding language, the press, assembly, religion, speech, property etc.

- c) Organizational frame work: It gives organizational framework for the governments. It defines the functions legislature, executive and judiciary, their inter-relationship, restrictions on their authority etc.
- d) Levels of Government: Constitution typically describes the amounts of various organs of the Government. No matter whether it's federal, unitary or confederal will be discussed by the Constitution. They delineate the energy amounts of provincial and national governments.
- e) Amendment provision: As it wouldn't be feasible to foretell all options in later with great amount of accuracy, there has to be adequate provisions for amendment of the Constitution. It must have a set of instructions for the very own modifications of its. The device may well collapse whether it lacks in scope for modification. Natural capacity to alter according to changing times and requires help some method to make it through as well as enhance.

Soviet Constitution was mainly an expression of ideology and was less an expression of organizational set up. The American Constitution is much more an expression of a guideline along with governmental business for the power connection of the regime compared to an expression of the philosophy of the regime.

### III. FUNDAMENTAL DUTIES

The 42nd Amendment in 1976 added a brand new part IV A dealing with Fundamental Duties in the Constitution of India. Article 51 A of this particular portion enlists eleven basic tasks. This particular portion was put on the suggestions of the Swarn Singh Committee bringing the Constitution of India in line with Article 29(1) of the Universal Declaration of Human Rights.

Article 51 A (g) particularly deals with the essential duty with respect to environment. It provides: It shall be the duty of every citizen of India to guard as well as enhance the natural environment which includes the forests, lakes, wildlife and rivers, and to have compassion for living creatures.

Article 51 A (j) more provides: It shall be the duty of every citizen of India to strive towards excellence in all of spheres of collective and individual activity, so that the nation continuously rises to greater level of achievements and endeavor.

The fundamental motive behind the basic duties is inculcating a feeling of duty with the individuals as well as in order to



promote the participation of theirs in restructuring and creating a welfare society. The defense of the planet is actually a constitutional priority and it's the problem of every citizen.

Article 51 A (g) is actually the essential duty of every citizen to defend as well as enhance all natural setting. Nevertheless, in the present situation pollution isn't merely brought on by exploiting the natural setting but if not in addition. For contemporary industrialized civilization such a concept might appear to be a misnomer. It's submitted that the term natural prior to the term atmosphere is to be known in a large sense. Nature gave us the planet pollution free. The essential duty of every citizen isn't simply to defend the planet from any type of pollution but additionally to enhance the environmental quality in case it's been adulterated. Therefore, the underlined focus of this essential duty is the fact that every citizen has a duty to make an endeavour to sustain the planet in the exact same fashion as it had been provided to us by nature. Today, we come to the question of ensuring the compliance of the basic tasks. If they had been integrated in the Constitution in the season 1976, it was considered that the essential law of the farm land reminds the citizens of the constitutional responsibilities of theirs. They can't be exclusively enforced. Nevertheless, in due course of time, the judicial activism offers an impetus to accomplish the underlined goals of the basic duties, especially, Article 51 A (g) associated with the planet. The interrelationship between Articles forty

eight, 51-A and 48-A (g) of the constitution have been clarified by the Supreme Court in the State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat.

#### IV. FUNDAMENTAL RIGHTS

The essence of Principle one of the Stockholm Declaration may be noticed in the constitution of ours in Articles fourteen, nineteen as well as twenty one dealing with the Right to Equality, Freedom of expression and the right to individual liberty and life respectively. The irreversible people's tribunal regards the anti humanitarian consequences of environmental and industrial hazards not as an inescapable part of the current manufacturing structure, but as an organized and pervasive violation of the most basic rights of humanity. Many critical among these are the best to life, health, expression, access and association to justice. These rights are actually contained in Part III of the Indian constitution which deals with the basic rights. A constitutional provision is not static it's ever evolving and ever changing as well as, consequently, do not acknowledge of a narrow, syllogistic or pedantic method. The basic rights are actually supposed to deliver one generation after another. The provisions of part III as well as part IV coping with basic rights as well as directive concepts respectively are complementary and supplementary to one another. The primary concept behind basic rights is actually achieving the objectives talked about in directive concepts and should be construed in the light of the directive

concepts. A right may be recognized as an essential right although it's not expressly stated in the constitution. As a result, we are able to claim that you can get lots of unenumerated basic rights in Judicial activism along with part III of India has taken a lead in interpreting a variety of unenumerated rights in Part III of the Constitution. Environment safety is just one of them. Certain provisions are just provided in the part coping with Fundamental Duties as well as directive Principles, but right to live in a great planet continues to be translated by the judiciary into different provisions of Part III coping with basic rights. Therefore, the judiciary in India has provided impetus to the Human Rights procedure for the defense of the ecosystem.

### **Right to life and Right to Live in Healthy Environment**

Article twenty one guarantees a fundamental right to life a life of dignity, to be lived in a good atmosphere, free of risk of infection and illness. All of us are conscious of the reality that there exists a good link between environment as well as life. The best to life will be meaningless if there was no healthy environment. The judicial interpretation makes Right to live in a great planet as the sanctum sanctorum of Human Rights. Inside M.C. Mehta v. Union of India, the Supreme Court impliedly addressed the right to live in pollution open environment as a component of the essential right of living under Article twenty one of the constitution.

### **Right to livelihood**

The Judicial interpretation has even more broadened the scope as well as ambit of Article twenty one and so right to life contains appropriate to livelihood, Even the appropriate to generate livelihood is actually viewed as part of the right to life under Article twenty one. This particular wide interpretation is really handy as it can help in checking out the governmental action that has an environmental impact that threatens the very poor individuals of the livelihood of theirs by dislocating them from the place of theirs of living or perhaps otherwise depriving them of their living. Within the last couple of years most individuals have been protesting against the building of big dams while they typically displace a huge number of tribal individuals as well as forest dwellers and hence rob them of the living of theirs.

### **Fundamental Freedom of expression and speech**

Article 19(1) (a) provides every citizen a fundamental right of speech and expression. In India the majority of the environmental jurisprudence has developed from judicial activism. The majority of the cases have come before the court as Public Interest Litigation or maybe PIL in which the individuals exercised the freedom of theirs of phrase as well as speech by writing letters to the court or perhaps usually by filing petitions before it, highlighting the violation of the rights of the individuals to live in a



great environment of one of the ways or even the other group.

### **Right to know**

The Right to know is implicit in Article 19(1)(a) and it's a good link with Article twenty one of the Constitution, especially in environmental matters in which the secret government choices might impact livelihood, life, and health of the individuals. The Right to find out or maybe access to info is the fundamental right for which individuals associated with a democratic state as India aspires. Secrecy erodes the legitimacy of elected governments.

### **Freedom to Carry on Trade or Business**

Article 19(1) (g) guarantees all citizens the right to perform some career, or maybe to carry on virtually any profession, business. or trade Nevertheless, this right of citizens isn't complete. The exception of it's is actually governed by Article 19(6) based on which realistic restrictions that are in the interest of general public could be imposed. As a result, atmosphere could be shielded from any company that is dangerous.

### **Right to Equality**

The Right to Equality in the Indian Constitution is actually offered below Article fourteen. It strikes for arbitrariness of governmental activity given that an action which is actually arbitrary should always entail a negation of equality. Anytime there's arbitrariness for State action, even if of the

legislative or perhaps of the executive or perhaps of an authority under Article twelve, Article fourteen springs into action and strikes down this kind of action. In reality, the absence of arbitrary power is actually the essence of rule of law in which the entire constitutional system of ours device is used. In such a method, discretion when conferred upon execution authorities should be confined to outline limits.

Inside D.D. Vyas v. Ghaziabad Development Authority, the grievance of the petitioner was that the respondents had not taken some measures to create the area reserved for park. On the flip side, respondents were making some time to carve out plots on such open room dedicated for Public Park in the program and alienate the exact same with a view to earning large earnings. The Allahabad High Court followed the dictum of the Supreme Court in Bangalore Medical Trust and held this expert or maybe express can't amend the program in such a means and so as to eliminate the fundamental feature of its permitting the transformation of space that is open intended for Public Park.

## **V. CONCLUSION**

With respect that is because of to the above mentioned views it's submitted that it will be healthier when such matters are actually left to the particular legislation or maybe judicial laws instead of accumulating everything in the constitutional Article. When all of sanctify of the document called when the essential law of the land, the constitution



should be upheld and so as to distinguish it from any other typical legislation.

**REFERENCES: -**

- [1] Kulshrestha, Sandeep & Prof, Asstt. (2018). How far Constitution of India is from the Constitutionalism ?. 10.13140/RG.2.2.22226.45760.
- [2] Chopra, Sunil & Kandasamy, S. (2018). Constitutional and Legal Protection of right to Health in the Perspective of Governance in India. Online International Interdisciplinary Research Journal, {Bi-Monthly}, ISSN 2249-9598, Volume-08, Sept 2018 Special Issue (02)
- [3] Kulshrestha, Sandeep. (2017). Basic Structure of the Indian Constitution and Restrictions on Powers of Court. Conference: National Conference on "Concept of Checks & Balances in Indian Constitution: Does it Require Reconsideration, At Amity Law School, Amity University MP, Gwalior, India, Volume: I
- [4] Kulshrestha, Dr. (2016) "Basic Structure of the Indian Constitution and Restrictions on Powers of Court" National Conference on "Concept of Checks & Balances in Indian Constitution: Does it Require Reconsideration, At Amity Law School, Amity University MP, Gwalior, India, Volume: I
- [5] Das, Dr. Saumendra and Saibabu, N., Indian Constitution: An Analysis of the Fundamental Rights and the Directive Principles (2014). ARS - Journal of Applied Research and Social Sciences, Vol.1, Issue.17, December 2014, ISSN 2350-1472. Available at SSRN: <https://ssrn.com/abstract=2592382>
- [6] Rajamanickam, Dr.Balamurugan & Inbakumar, Subbaiyan & Sethuraman, R.G.. (2011). A critical view on the impact of constitution of India as internal regulatory mechanism for environmental issues and policies. 4. 263-265. 10.17485/ijst/2011/v4i3/29979.
- [7] Tripathi, Anurag. (2010). Federal Structure of Indian Constitution. SSRN Electronic Journal. 10.2139/ssrn.1562683.
- [8] M. P.jain, 2007, Constitution of India, 'Wadhawa and Company' Nagpur, Fifth Edition Reprint 2007.
- [9] Singh, Mahendra & Deva, Surya. (2006). The Constitution of India: Symbol of Unity in Diversity.