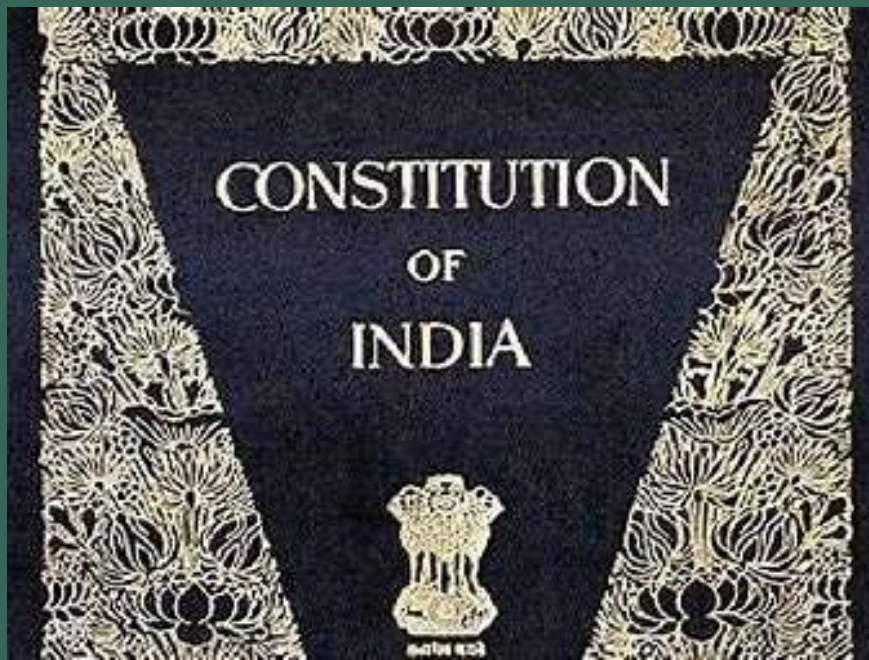

CONSTITUTIONAL PROVISIONS AND ENVIRONMENTAL PROTECTION



CONSTITUTIONAL PROVISIONS

- Preamble
- Distribution of Legislative Power
- Obligation to Implement International Agreements
Art.253
- Fundamental Duties
- Directive Principles of State Policy
- Fundamental Rights
- Remedies Writ Jurisdiction.

PREAMBLE

- **Socialistic pattern-** social interest prevails over individual interest
- Expressed by 42nd amendment 1976
- Public interest is reasonable restriction on fundamental rights
- Socialism implies 'decent standard of living for all'
- **Democracy** implies public participation in governance
- Public participation in decision making process –eg EIA
- Right to information –public access to information essential for participation

DISTRIBUTION OF LEGISLATIVE POWER

- Distribution of legislative powers between Parliament and State Legislature.
- Competency and empowerment to both legislatures
- Art 245 –extent of legislative power
- Art 246– distribution of subjects thru lists
- Art 248 residuary power
- Parliament can legislate on—
 - exclusively Union list
 - On request –State List
 - concurrent list

DISTRIBUTION OF LEGISLATIVE POWER

- 42nd Amendment 1976
- Insertion in concurrent list:
 1. entry 17 A—forest (from list 2)
 2. 17 B--protection of wild animals and birds.
 3. 20 A-- population control

ART 253- OBLIGATION TO IMPLEMENT INTERNATIONAL AGREEMENTS

- Environment concerns at international level—realised if strict implementation by all
- International declarations /treaties impose obligation to implement it in respective States
- India active participation in Stockholm Declaration 1972, Rio Declaration 1992,earth Summit plus five 1997,Earth summit at Johhenesberg,2002 etc—hence under obligation
- Art 51(c)- The State shall endeavour to ‘foster respect for international law and treaty obligations in the dealings of organised peoples with one another’

ART 253- OBLIGATION TO IMPLEMENT INTERNATIONAL AGREEMENTS

- Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make *any law* for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or *any decision* made at any international conference, association or other body
- Entry 13 of Union List : ‘ participation in international conferences, associations and other bodies and implementing of decisions made thereat.
- and 14: entering into treaties and agreements with foreign countries and implementing of treaties agreements and conventions with foreign countries.

ART 253- OBLIGATION TO IMPLEMENT INTERNATIONAL AGREEMENTS

- Impact :Parliament can make law on subjects even in State list, for implementing conventions
- No question of competency
- Air Act 1981:
- Whereas decisions were taken at the United Nations Conference on the Human Environment held in Stockholm in June 1972, in which India participated, to take appropriate steps for the preservation of the natural resources of the earth which, among other things, include the preservation of the quality of air and control of air pollution;

And whereas it is considered necessary to implement the decisions aforesaid insofar as they relate to the preservation of the quality of air and control of air pollution;

ART 253- OBLIGATION TO IMPLEMENT INTERNATIONAL AGREEMENTS

- Environment Act 1986
- An Act to provide for the protection and improvement of environment and for matters connected therewith.
- Whereas decisions were taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, to take appropriate steps for the protection and improvement of human environment ;

And whereas it is considered necessary further to implement the decisions aforesaid in so far as they relate to the protection and improvement of environment and the prevention of hazards to human being, other living creatures, plants and property;

ART 253- OBLIGATION TO IMPLEMENT INTERNATIONAL AGREEMENTS

- *Peoples Union for civil liberties v Union of India* (1997) SC provisions of international covenant-can be relied upon, and enforceable.
- *Vellore citizens Welfare Forum v Union of India* (1996) SC customary international law shall be followed by courts of law
- *N D Dayal v Union of India* (2004) SC international principles like PPP is part of domestic law

FUNDAMENTAL DUTIES

- Added on recommendations of Swaran Singh Committee –in line with article 29(I) UDHR
- Art 51 A(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- Art 51 A (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement

FUNDAMENTAL DUTIES

- Protect and improve
- Natural environment
- Citizens
- L K Koolwal v State (AIR) 1988 Raj
- We can call Article 51A 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 the citizen to move to the Court to see that the State performs its duties faithfully and the obligatory and primary duties are performed in accordance with the law of land.

FUNDAMENTAL DUTIES

- *Goa Foundation V State of Goa* 2001 bom ---whether societies have duty
- *State of Gujrat v Mirzapur Moti 2005 SC* interrelation ship between Articles 48,48A 51Ag
- Supreme Court constitution bench heard a challenge of a complete ban of the slaughter of cow progeny in **Gujarat**.

DIRECTIVE PRINCIPLES OF STATE POLICY

- Art 47 Duty of the State to raise the level of nutrition and the standard of living and to improve public health The State *shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties*
- Art 48 A--*The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country*
- *Art 37* The provisions contained in this Part *shall not be enforceable* by any court, but the principles therein laid down are nevertheless *fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws*

DIRECTIVE PRINCIPLES OF STATE POLICY

- *Kesvanand Bharti v State of Kerela AIR 1973 SC*— judicial process is State action u/Art 37 bound to apply Art 48 A in making judgments
- *Shri Sacchinand Pandey v State of WB AIR 1987*—Problem of ecology –Court bound to bear Art 48A and Art 51 A (g) in mind
- *ABSK Sangh v Union of India AIR 1981 SC*— DPSP code of interpretation for Fundamental rights
- *M C Mehta v Union of India 2004 SC (CNG case)*
- *Articles 48A, 51A(g), 47*— collectively cast duty on States