

## **Right to Get Pollution Free Environment and Indian Constitution**

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### **INTRODUCTION**

In India, the concern for environmental protection has not only been raised to the status of fundamental law of the land, but it is also wedded with human rights approach, and it is now well established that, it is the basic human right of every individual to live in pollution free environment with full human dignity. In view of the various constitutional provisions and other statutory provisions contained in various laws relating to environment protection, the Supreme Court has held that the essential feature of “sustainable development” such as the “precautionary principle” and the “polluter pays principle” are part of the environmental law of the country. When our constitution was drafted it did not contain any specific provisions on environment and even the word “Environment” did not find a place in the constitution; there are certain provisions which to great extent had direct bearing on the environment such as improvement of public health, organization of agricultural and animal husbandry on modern and scientific lines and protection of natural monuments from spoliation, disfigurement etc.

The history of legislative started with Indian Penal Code, 1860. Section 268 defined what is public nuisance. Abatement of public nuisance is also a subject of Section 133 to 144 of I.P.C. These are only prohibitive provisions. Sections 269 to 278 of the Indian Penal Code are penal provisions which means that a person guilty of violating any of the provisions is liable to prosecution and punishment. Legislative fight against pollution continued in independent India.



Now there is a host of legislation in India aimed at protecting the environment from pollution and maintaining the ecological balance. The Environment (Protection) Act, 1986 is one major Act for environmental protection. The Government of India has launched various programmes and made use of audiovisual media to educate the people and arouse their consciousness for the protection of environment.

### **Environment and Constitution of India:**

The protect and improve the environment is a constitutional mandate. It is a commitment for a country wedded to the ideas of a welfare State. The Indian Constitution contains specific provisions for environment protection under the chapters of Directive Principles of State Policy and Fundamental Duties. The absence of a specific provision in the Constitution recognizing the fundamental right to clean and wholesome environment has been set off by judicial activism in the recent times. Articles 48-A and 51-A. Clause (g): Initially, the Constitution of India had no direct provision for environmental protection. Global consciousness for the protection of environment in the seventies, Stockholm Conference and increasing awareness of the environmental crisis prompted the Indian Government to enact 42nd Amendment to the Constitution in 1976. The Constitution was amended to introduce direct provisions for protection of environment. This 42nd Amendment added Article 48-A to the Directive Principles of State Policy.

### **Article 49-A**

The Article states: “The State shall Endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.” The said amendment imposed a responsibility on every citizen in the form of Fundamental Duty.

### **Article 51-A, Clause (g)**

Article 51-A (g) which deals with Fundamental Duties of the citizens states: “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, protection and



improvement of natural environment is the duty of the State (Article 48-A) and every citizen (Article 51- A (g)).

### **Article 253**

Article 253 states that ‘Parliament has power to make any law for the whole or any part of the country for implementing any treaty, agreement or convention with any other country. In simple words this Article suggests that in the wake of Stockholm Conference of 1972, Parliament has the power to legislate on all matters linked to the preservation of natural environment. Parliament’s use of Article 253 to enact Air Act and Environment Act confirms this view. These Acts were enacted to implement the decisions reached at Stockholm Conference.

### **Environment and Citizens**

The Constitution of India has made a double provision:

- (i) A directive to the State for protection and improvement of environment.
- (ii) Imposing on every citizen in the form of fundamental duty to help in the preservation of natural environment. This is the testimony of Government’s awareness of a problem of worldwide concern. Since protection of environment is now a fundamental duty of every citizen, it is natural that every individual should do it as personal obligation, merely by regulating the mode of his natural life. The citizen has simply to develop a habitual love for pollution.

### **The Constitutional provisions**

1. Article 48(A)
2. Article 21
3. Article 253
4. Article 51(A)



5. Article 19(1)(g)

6. Article 51

7. Article 14.

## Article 14

### PROTECTION OF THE ENVIRONMENT

The Government and the Contractor recognize that Petroleum Operations will cause some impact on the environment in the Contract Area. Accordingly, in performance of the Contract, the Contractor shall conduct its Petroleum Operations with due regard to concerns with respect to protection of the environment and conservation of natural resources and shall in particular;

(a) employ modern oilfield and petroleum industry practices and standards including advanced techniques, practices and methods of operation for the prevention of Environmental Damage in conducting its Petroleum Operations;

(b) Take necessary and adequate steps to:

(i) prevent Environmental Damage and, where some adverse impact on the environment is unavoidable, to minimize such damage and the consequential effects thereof on property and people;

(ii) Ensure adequate compensation for injury to persons or damage to property caused by the effect of Petroleum Operations; and

(c) Comply with the requirements of applicable laws and the reasonable requirements of the Government from time to time.

If the Contractor fails to comply with the provisions of paragraph (b)(i) of Article or contravenes any relevant law, and such failure or contravention results in any Environmental Damage, the



Contractor shall forthwith take all necessary and reasonable measures to remedy the failure and the effects thereof.

If the Government in accordance with the laws has good reason to believe that any works or installations erected by the Contractor or any operations conducted by the Contractor are endangering or may endanger persons or any property of any person, or are causing or may cause pollution, or are harming or may harm fauna or flora or the environment to a degree which the Government deems unacceptable, the Government may require the Contractor to take remedial measures within such reasonable period as may be determined by the Government and to repair any damage to the environment. If the Government deems it necessary, it may also require the Contractor to discontinue Petroleum Operations in whole or in part until the Contractor has taken such remedial measures or has repaired any damage caused.

The measures and methods to be used by the Contractor for the purpose of complying with the terms of paragraph (b)(i) of Article 14 shall be determined in timely consultation with the Government upon the commencement of Petroleum Operations or whenever there is a significant change in the scope or method of conducting Petroleum Operations and shall take into account the international standards applicable in similar circumstances and the relevant environmental impact study carried out in accordance with Article

The Contractor shall notify the Government, in writing, of the measures and methods finally determined by the Contractor and shall cause such measures and methods to be reviewed from time to time in the light of prevailing circumstances. The Contractor shall cause a person or persons with special knowledge on environmental matters, to carry out two environmental impact studies in order:

- (a) to determine at the time of the studies the prevailing situation relating to the environment, human beings and local communities, the flora and fauna in the Contract Area and in the adjoining or neighboring areas; and



(b) to establish the likely effect on the environment, human beings and local communities, the flora and fauna in the Contract Area and in the adjoining or neighbouring areas in consequence of the relevant phase of Petroleum Operations to be conducted under this Contract, and to submit, for consideration by the Parties, methods and measures contemplated in Article 14 for minimizing Environmental Damage and carrying out Site Restoration activities. The first of the aforementioned studies shall be carried out in two parts, namely, a preliminary part which must be concluded before commencement of any field work relating to a seismographic or other survey, and a final part relating to drilling in the Exploration Period. The part of the study relating to drilling operations in the Exploration Period shall be approved by Government before the commencement of such drilling operations, it being understood that such approval shall not be unreasonably withheld.

The second of the aforementioned studies shall be completed before commencement of Development Operations and shall be submitted by the Contractor as part of the Development Plan, with specific approval of Government being obtained before commencement of Development Operations, it being understood that such approval shall not be unreasonably withheld.

The studies mentioned in Article 14.5 above shall contain proposed environmental guidelines to be followed in order to minimize Environmental Damage and shall include, but not be limited to, the following, to the extent appropriate to the respective study taking into account the phase of operations to which the study relates

- (a) proposed access cutting;
- (b) clearing and timber salvage;
- (c) wildlife and habitat protection;
- (d) fuel storage and handling;



- (e) use of explosives;
- (f) camps and staging;
- (g) liquid and solid waste disposal;
- (h) cultural and archaeological sites;
- (i) selection of drilling sites;
- (j) terrain stabilization;
- (k) protection of freshwater horizons;
- (l) blowout prevention plan;
- (m) flaring during completion and testing of Gas and Oil Wells;
- (n) abandonment of Wells;
- (o) rig dismantling and site completion;
- (p) reclamation for abandonment;
- (q) noise control;
- (r) debris disposal; and
- (s) protection of natural drainage and water flow.

***Khoday Distilleries Ltd vs State of Karnataka on 19 October, 1994<sup>1</sup>***

Article 19(1)(g) read with Article 19(6) spells out a fundamental right of the citizens to practise any profession or to carry on any occupation, trade or business so long as it is not prohibited or is

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<sup>1</sup> (1995)(1) SCC 574



within the framework of the regulation, if any, if such prohibition or regulation has been imposed by the State by enacting a law in the interests of the general public. It cannot be disputed that certain professions, occupations, trades or businesses which are not in the interests of the general public may be completely prohibited while others may be permitted with reasonable restrictions on them. For the same purpose, viz., to subserve the interests of general public, the reasonable restrictions on the carrying on of any profession, occupation, trade, etc., may provide that such trade, business etc., may be carried on exclusively by the State or by a Corporation owned or controlled by it. The right conferred upon the citizens under Article 19(1)(g) is thus subject to the complete or partial prohibition or to regulation, by the State. However, under the provisions of Article 19(6) the prohibition, partial or complete, or the regulation, has to be in the interests of the general public.

The right given by this article to freely carry on trade, commerce and intercourse throughout the territory of India is undisputedly subject to the same restrictions as is the right under Article 19(1)(g).

Apart from the restrictions placed on the right under Article 301, by the provisions of Articles 19(6), 47, 302 and 303, the provisions of Article 304 also place such restrictions on the said right. So do the provisions of Article 305, so far as they protect existing laws and laws creating State monopolies. The provisions of the aforesaid articles, so far as they are relevant for our purpose, read together, therefore, make the position clear that the right conferred by Article 19(1)(g) is not absolute. It is subject to restrictions imposed by the other provisions of the Constitution. Those provisions are contained in Articles 19(6), 47, 302, 303, 304 and 305.

## **ARTICLE 21**

Article 21 of the constitution of India provides for the right to life and personal liberty. It states that “no person shall be deprived of his life or personal liberty except according to procedure established by law.” In Rural Litigation and Entitlement



**Kendra v State of UP**, also known as the Dehradun quarrying case, the Supreme Court of India has held that pollution caused by quarries adversely affects the health and safety of people and hence, the same should be stopped as being violative of Article 21. In this case, the Supreme Court for the first time held that Further, in the case of **Subhash Kumar v State of Bihar**<sup>2</sup>, again the apex court held that the right to get pollution free water and air is a fundamental right under Article 21. Following this decision, the right to pollution free environment was incorporated under the head of right to life and all the law courts within the Indian Territory were bound to follow the same. This laid down the foundation of environmental litigation in India.

Similarly, public health and ecology were held to be the priorities under Article 21 and the constitution of a green bench was also ordered by the Supreme Court.

In the case of **Ratlam Municipality v Vardicharan**<sup>3</sup>, where the problem of pollution was due to private polluters and haphazard town planning, it was held by the Supreme Court that pollution free environment is an integral part of right to life under Article 21.

### Directive Principles of State Policy

#### Article 48(A)

48A. Protection and improvement of environment and safeguarding of forests and wild life The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

#### *Sher Singh vs State Of Hp on 6 February, 2014*<sup>4</sup>

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<sup>2</sup> (191) SSC 598

<sup>3</sup> AIR 1980 AIR 1622

<sup>4</sup> CWPIl No. 15 of 2010



The citizens of the country have a fundamental right to a wholesome, clean and decent environment. The Constitution of India, in terms of Article 48A, mandates that the State is under a Constitutional obligation to protect and improve the environment and to safeguard the forest and wild life in the country. By 42nd Amendment to the Constitution, the Parliament, with an object of sensitizing the citizens of their duty, incorporated Article 51A in the Constitution, inter alia, requiring a citizen to protect and improve the natural environment including the forests, lakes, rivers and wild life and to have a compassion for living creatures. The legislative intent and spirit under Articles 48A and 51A(g) of the Constitution find their place in the definition of 'environment' under the Environment (Protection) Act, 1986 (for short the 'Act of 1986'). The legislature enacted various laws like the Air (Prevention and Control of Pollution) Act, 1981, Water (Prevention and Control of Pollution) Act, 1974 and the Wildlife (Protection) Act, 1972, the Forest (Conservation) Act, 1980, the Indian Forest Act, 1927 and the Biological Diversity Act, 2002 and other legislations with the primary object of giving wide dimensions to the laws relating to protection and improvement of environment. It is true that Part III of the Constitution relating to Fundamental Rights does not specifically devote any Article to the Environment or protection thereof per se. However, with the development of law and pronouncement of judgments by the Supreme Court of India, Article 21 of the Constitution has been expanded to take within its ambit the right to a clean and decent environment.

Not only this, there is still a greater obligation upon the Centre, State and the Shrine Board in terms of Article 48A of the Constitution where it is required to protect and improve the environment. Article 25(2) of the UDHR ensures right to standard of adequate living for health and well-being of an individual including housing and medical care and the right to security in the event of sickness, disability etc. The expression 'life' enshrined in Article 21 of the Constitution does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of living, hygienic conditions in the workplace and leisure. The right to life with human dignity encompasses within its fold, some of the finer facets of human civilization which makes life worth living. The expanded connotation of



life would mean the tradition and cultural heritage of the persons concerned. In the case of Consumer Education & Research Centre (supra), the Court discussing the case of C.E.S.C. Ltd. v. Subhash Chandra Bose (1992) 1 SCC 441) stated with approval that in that case the Court had considered the gamut of operational efficacy of human rights and constitutional rights, the right to medical aid and health and held the right to social justice as a fundamental right. The Court further stated that the facilities for medical care and health to prevent sickness, ensure stable manpower for economic development and generate devotion to duty and dedication to give the workers' best performance, physically as well as mentally. The Court particularly, while referring to the workmen made reference to Articles 21, 39(e), 41, 43 and 48-A of the Constitution of India to substantiate that social security, just and humane conditions of work and leisure to workmen are part of his meaningful right to life.

### **Article 51**

Promotion of international peace and security The State shall Endeavour to

- (a) Promote international peace and security;
- (b) Maintain just and honourable relations between nations;
- (c) Foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and encourage settlement of international disputes by arbitration part iv a fundamental duties.

### ***State of Gujarat vs Mirzapur Moti Kureshi Kassab on 26 October, 2005<sup>5</sup>***

By enacting clause (g) in Article 51-A and giving it the status of a fundamental duty, one of the objects sought to be achieved by the Parliament is to ensure that the spirit and message of Articles 48 and 48A is honoured as a fundamental duty of every citizen. The Parliament availed the opportunity provided by the Constitution (Forty-second Amendment) Act, 1976 to improve the

<sup>5</sup> Air 2006 SC 212



manifestation of objects contained in Article 48 and 48-A. While Article 48-A speaks of "environment", Article 51-A(g) employs the expression "the natural environment" and includes therein "forests, lakes, rivers and wild life". While Article 48 provides for "cows and calves and other milch and draught cattle", Article 51-A(g) enjoins it as a fundamental duty of every citizen "to have compassion for living creatures", which in its wider fold embraces the category of cattle spoken of specifically in Article 48.

### **Article 51(A)**

#### **Fundamental duties It shall be the duty of every citizen of India**

- (a) To abide by the Constitution and respect its ideals and institutions, the national Flag and the National Anthem;
- (b) To cherish and follow the noble ideals which inspired our national struggle for freedom;
- (c) To uphold and protect the sovereignty, unity and integrity of India;
- (d) To defend the country and render national service when called upon to do so;
- (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- (f) To value and preserve the rich heritage of our composite culture;
- (g) To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- (h) To develop the scientific temper, humanism and the spirit of inquiry and reform;
- (i) To safeguard public property and to abjure violence;



(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 part v the union chapter i the executive The President and Vice President.

***State of Gujarat vs Mirzapur Moti Kureshi Kassab on 26 October, 2005<sup>6</sup>***

The contexts in which article 51(a) appears in the document By enacting clause (g) in Article 51-A and giving it the status of a fundamental duty, one of the objects sought to be achieved by the Parliament is to ensure that the spirit and message of Articles 48 and 48A is honoured as a fundamental duty of every citizen. The Parliament availed the opportunity provided by the Constitution (Forty-second Amendment) Act, 1976 to improve the manifestation of objects contained in Article 48 and 48-A. While Article 48-A speaks of "environment", Article 51-A(g) employs the expression "the natural environment" and includes therein "forests, lakes, rivers and wild life". While Article 48 provides for "cows and calves and other milch and draught cattle", Article 51-A(g) enjoins it as a fundamental duty of every citizen "to have compassion for living creatures", which in its wider fold embraces the category of cattle spoken of specifically in Article 48.

It is thus clear that faced with the question of testing the constitutional validity of any statutory provision or an executive act, or for testing the reasonableness of any restriction cast by law on the exercise of any fundamental right by way of regulation, control or prohibition, the Directive Principles of State Policy and Fundamental Duties as enshrined in Article 51-A of the Constitution play a significant role. The decision in Quareshi-I in which the relevant provisions of the three impugned legislations was struck down on the singular ground of lack of reasonability, would have decided otherwise if only Article 48 was assigned its full and correct meaning and due weight age was given thereto and Articles 48-A and 51-A(g) were available in the body of the Constitution.

<sup>6</sup> Air 2006 SC 212



## Article 253

Legislation for giving effect to 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.

## CONCLUSION

Connecting human rights and environment is a valuable sourcebook that explores the uncharted territory that lies between environmental and human rights legislation. Human beings can ensure fundamental equality and adequate conditions of life in an environment that permits a life of dignity and well-being. There is an urgent need to formulate laws keeping in mind the fact that those who pollute or destroy the natural environment are not just committing a crime against nature, but are violating human rights as well. Indeed, health has seemed to be the subject that bridges gaps between the two fields of environmental protection and human rights. The advancement of the relationship between human rights and environment would enable incorporation of human rights principles within an environmental scope, such as antidiscrimination standards, the need for social participation and the protection of vulnerable groups.

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