



CONSTITUTIONAL PROVISIONS FOR THE PROTECTION OF ENVIRONMENT WITH RELEVANT CASE LAWS

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Introduction:

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. In February

1971, the University Grants Commission (India), in collaboration with other organizations, launched a symposium on the development of environmental studies in the Indian Universities. The consensus that emerged at the symposium was that ecology and environmental issues should form part of the courses of study at all levels. Further, with the object of generating an awareness of the need to maintain ecological balance. In order to keep the environment pure and to obviate the hazards of pollution and ecological imbalance, the Department of Laws, Punjab University, Chandigarh organised a three-day National Seminar in 1984 on "Law Towards Environmental Protection" Fifty five delegates from all over India participated in the seminar.

It claimed: (i) It is fundamental human right to live in an unpolluted environment. (ii) It is fundamental duty of every individual to maintain purity of

environment. Soon after the Stockholm Conference, many Acts were introduced i.e. Wildlife Act, 1972; Water Act, 1974; Air Act, 1981 etc. Within five years of Stockholm Declaration, the Constitution of India was amended to include Protection and Improvement of Environment as constitutional mandate. The protection and improvement of environment is now a fundamental duty under Constitution Act of 1976. Govt., of India has set up a National Committee on Environmental Planning and Coordination. Government of India's programme for environment included the programme for cleaning the rivers including Ganga and Yamuna. Prime Minister, Sh. Rajiv Gandhi constituted Central Ganga Authority for the purpose of pollution control of Ganga. The enactment of Environment (Protection) Act, 1986 was the immediate off-shoot, of this programme. The Supreme Court (writ petition (Civil) No. 860 of 1991) has directed the University Grants Commission to prescribe a course on 'Man and Environment'. In the light of this directive, the UGC issued a circular to various universities to introduce the course on 'Environmental Education'.

The main attention in the education on environment is as below:

(i) Over-population and the ways to

check its rapid growth. (ii) Afforestation as a preventive to soil erosion and water pollution (iii) Methods to prevent air pollution, insisting on smokeless cooking (iv) Discipline in playing radio and television sets and a ban on use of loudspeaker. (v) Elementary knowledge of the scientific and philosophical basis of man and the environment (vi) Rules regarding disposal of household waste; and (vii) General principles of sanitation

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 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.

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.

Kamal Nath Case: In the State of Himachal Pradesh, Span motel, owned by the family members of Shri Kamal

Nath, Minister for Environment and Forests, Govt. of India diverted the Course of river Beas to beautify the motel and also encroached upon some forest land. The apex court ordered the management of the Span motel to hand over forest land to the Govt. of Himachal Pradesh and remove all sorts of encroachments. The Court delivered a landmark judgment and established principle of exemplary damages for the first time in India. The Court said that polluter must pay to reverse the damage caused by his act and imposed a fine of Rs Ten Lakhs (Rs 10,00,000) on the Span motel as exemplary damages. The Supreme Court of India recognized Polluter Pays Principle and Public Trust Doctrine.

Protecting the environment OLEUM GAS LEAK CASE, 1986 M C MEHTA, who was single-handedly responsible for making environmental degradation a part of public discourse, says it is vital that PILs have no ulterior motive "GAS HAS leaked. The gas is travelling. I am worried about your lordship's life". Environmental lawyer Mahesh Chander Mehta relives what he told the Chief Justice of India P.N. Bhagwati on December 4th, 1985. Oleum gas had just leaked from the Shriram Chlorine plant in Najafgarh, and

Delhi had panicked. By a strange coincidence, M.C. Mehta had filed a public interest litigation against the Chlorine plant a month earlier (before the gas leak), and was scheduled to argue another case before the Chief Justice of India on December 4th. When the matter came up, Mehta referred to the Oleum gas that had leaked just three hours earlier. "The gas leaked at 11 am; the case was listed and heard at 2 pm; the court immediately issued a notice" gushes Mehta. "No case has been heard this quickly". Nor perhaps judged so decisively. In siding with Mehta, the Supreme Court punished the company heavily; the entire complex eventually shut down. More far reaching, the Supreme Court created the 'absolute liability principle' — companies engaged in inherently hazardous activities had absolutely no excuse when an accident occurred.

Khoday Distilleries Ltd vs State of Karnataka on 19 October, 1994 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 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.

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 the right to wholesome

environment is a part of right to life and personal liberty guaranteed under Article 21 of the Constitution. Further, in the case of *Subhash Kumar v State of Bihar*, 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 ecology³ 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*, 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.

State of Gujarat vs Mirzapur Moti Kureshi Kassab on 26 October, 2005 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.

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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