

# Constitutional Provisions for the Protection and Conservation of Environment with Important Caselaws

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## ABSTRACT

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 then Prime Minister Mrs. Indira Gandhi, in the first International Conference on Human Environment at Stockholm in 1972, voiced deep concern about the degradation of the environment and eco-imbalances. She also emphasized that pollution, population and poverty are inter-related problems and there must be an integrated approach to deal with them. India was also one of the signatories of the Stockholm Declaration which is known as Magna Carta on human environment. Based upon the Stockholm conference, the Indian parliament passed the forty second amendment to the constitution in the year 1976 and incorporated specially two Articles relating to protection and improvement of environment where in the Constitution of India obligates the "State" as well as "Citizens" to "Protect and Improve" the environment. so, the key discussions are to control population explosion, use green technology, afforestation, to prevent food pollution etc.

**Keywords:** Environment Pollution, Green Technology, Afforestation, Poverty, Human Right

## I. INTRODUCTION

The Indian legislature started thinking about public nuisance from the year 1860 and Section 268 defined what is public nuisance. The Abatement of public nuisance is also a subject which is also defined from from Section 133 to 144 of Criminal Procedure Code. It is also clearly seen that the 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.

Our country's Legislative fight against pollution continued from prior independence till now. Now not only legislative but also citizens should have aim 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 media to educate the people and the main aim is to spread awareness among all the citizens of our country. In February 1971, the University Grants Commission (India) 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. There are various seminars and conferences were started in many universities and the only aim is to spread awareness among people and they should know the environmental jurisprudence. It becomes necessary for every human being to think about their future and sustainability for our future generation.

In India environment was hailed highly in ancient and medieval time but till 1976 there were no major legislations relating to environmental protection. The main convention on protection of environment is known as Stockholm Convention and the main objectives of this convention are to recognize environmental education as a potential tool to better the lives of many nations and to engage the international community in environmental policy debate

After Stockholm Declaration there are other conventions are also coming they are: Brundtland Report - our common future- 1987, Rio de Janeiro – Human Environment and Earth Summit- 1992, Rio+5- New York- 1997, Johannesburg- World Summit on Sustainable Development-2002, Rio de Janeiro – Human Environment, Earth Summit-2012.

The significance of the Stockholm Declaration has highly influence in the development of international environmental laws and policies. The Declaration containing 26 principles is generally regarded as the foundation on modern international environmental laws. The creation of UNEP was the landmark achievement of the Stockholm Declaration. It provided inspiration, created public awareness and concern over environmental issues internationally. It firstly provided a common platform for international community to make a compromise among those state and it also given importance to the role of International Environmental Organizations.

The Brundtland Report described sustainability as a three-legged stool with people, planet and profit taking equal importance in the equation. The report led the production of Agenda 21, an action plan of the UN with regard to sustainable development. The Brundtland report (Our Common Future) defined sustainable development as **“development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”**

The main issues which are discussed in the Rio de Janeiro 1997 are systematic scrutiny of patterns of production — particularly the production of toxic components or poisonous waste , alternative sources of energy to replace the use of fossil fuels which are linked to global climate change ,new reliance on public transportation systems in order to reduce vehicle emissions the health problems caused by polluted air and smoke, the growing scarcity of water etc. the main achievement of the Rio de Janeiro are An important achievement was an agreement on the Climate Change Convention which in turn led to the Kyoto Protocol and the another agreement was to "not to carry out any activities on the lands of indigenous peoples that would cause environmental degradation or that would be culturally inappropriate". The Rio+5 New York 1997 was a special session of United Nation General Assembly held in New York in 1997. It is named as like this because it held after 5 years after the Rio Convention 1992. In this convention it was found that our ocean, forest and atmosphere are in trouble. The main focus is on global warming. Poverty is another aspect. Population explosion is also a problem. Carbon Dioxides are also increasing in our atmosphere.

The Johannesburg Convention was held in 26th August – 4th September 2002 in Johannesburg, South Africa. They discussed about “People, Planet and Prosperity” and also on environment, poverty and development. The focused area of the discussion are Poverty eradication, AIDS and other diseases, Desertification and land degradation, Women and development, Good governance and Changing unsustainable pattern of consumption and production.

This is also known as “From our Origins to the future”. The aims and objectives of this convention are: Reaffirm the commitment to SD, to build an equitable and caring society to fulfil the need of the human dignity, Social development and environmental protection in local, national and regional level,

changing consumption and production patterns and the increasing gap between developed and developing nation is a major threat to the global prosperity.

In 2012, the United Nations Conference on Sustainable Development was also being held in Rio and is also commonly called Rio+20 or Rio Earth Summit 2012 was held June 13-22nd. The objectives of the Rio+20 Summit are: to secure renewed political commitment to sustainable development, to assess progress towards internationally agreed goals on sustainable development and to address new and emerging challenges. So, these are the various conventions which are organized only to spread the public awareness about the environmental protection and environmental sustainability worldwide

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.

The Constitution of India was also amended to include Protection and Improvement of Environment as constitutional mandate. The protection and improvement of environment is now a fundamental duty and it was inserted in our constitution in 1976 and in that year India has also 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. The main attention is Protection of Environment Act 1986. The main attention to protect our environment are given below:

- ✓ population explosion and the ways to check its rapid growth.

- ✓ Afforestation as a preventive to soil erosion and water pollution
- ✓ Methods to prevent air pollution
- ✓ Discipline in playing radio and television sets and a ban on use of loudspeaker.
- ✓ Elementary knowledge of the scientific and philosophical basis of man and the environment
- ✓ Rules regarding disposal of household waste;
- ✓ General principles of sanitation Environment and Constitution of India Reforestation
- ✓ Use green technologies
- ✓ use public transport
- ✓ Create awareness
- ✓ Be sustainable

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) was inserted in the Constitution of India had no direct provision for environmental protection. This 42nd Amendment added Article 48-A to the Directive Principles of State Policy. Article 48-A: The Article states: "The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country." It means the state has to take steps to protect and improve the environment, forest and wildlife. 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 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.

In *M.C Mehta VS Union of India* 1988 the supreme court relying on Article 48-A gave directions to the central and state Government and various local bodies and boards under the various statutes to take appropriate steps for the prevention and control of pollution of water.

In *T.N. Godaverman Thirumulpad VS Union of India* AIR 2012 in this writ petition seeking protection for directing to prepare rescue plan to save wild buffalo from extinction. The plea of the state govt. is that there was lack of funds to undertake various programmes to protect these wild buffalos. The state govt has directed to give full effect to centrally sponsored scheme for saving wild buffalo.

In *Association for Environmental Protection VS State of Kerala* AIR 2013, they discussed the Doctrine of Public Trust and this doctrine enjoins upon the govt. to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial exploitation to satisfy the greed of the few.

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* 1988, 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* 1991, 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* 1980, 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 and also given importance to Directive Principles of State Policy Article 48A and it says about protection and improvement of environment and safeguarding of forests and wild life.

*Sher Singh vs State Of Himachal Pradesh* on 6 February, 2014 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'). 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.

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 organized peoples with one another; and encourage settlement of international disputes by arbitration PART IVA FUNDAMENTAL DUTIES.

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".

In Mohan Kumar Singhania & Ors. v. Union of India & Ors., 1992, a governmental decision to give utmost importance to the training programme of the Indian Administrative Service selectees was upheld by deriving support from Article 51-A(j) of the Constitution, holding that the governmental decision was in consonance with one of the fundamental duties. In State of U.P. v. Yamuna Shanker Misra & Ors., (1997), this Court interpreted the object of writing the confidential reports and making entries in the character rolls by deriving support from Article 51-A(j) which enjoins upon every citizen the primary duty to constantly endeavour to strive towards excellence, individually and collectively.

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

## II. CONCLUSION

The Government can at least see that future factories are set up at a distant place, an industrial complex far away from the township. The Researcher may find out how to avoid harmful smoke from running vehicles. Deforestation should be stopped and Forestry should be developed. Discharge of Factory wastes in rivers should be banned so as to make the river-water free from pollution. So connecting between human rights and environment, they are interrelated and interdependent between each other. 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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