



CONSTITUTIONAL PROVISIONS FOR THE PROTECTION OF ENVIRONMENT WITH RELEVANT CASE LAWS

INDEX

1. INTRODUCTION	4
2. Article 14	8
3. Article 19(1) (g)	15
4. Article 21	16
5. Article 48(A)	17
6. Article 51	20

7. Article 51(A)	22
8. Article 253	24
9. Conclusion	25

Cases are attached to respective Articles *

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 audio-visual 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 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.”

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

14.1 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.

14.2 If the Contractor fails to comply with the provisions of paragraph (b)(i) of Article 14.1 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.

14.3 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.

14.4 The measures and methods to be used by the Contractor for the purpose of complying with the terms of paragraph (b)(i) of Article 14.1 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

14.5. 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 neighbouring 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 14.4 for minimizing Environmental Damage and carrying out Site Restoration activities. 14.5.1 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.

14.5.2 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.

14.5.3 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.

14.5.4 Government shall convey its decision regarding any proposal for environmental clearances submitted by the Contractor pursuant to the provisions of this Article or Contract or required under any laws of India within one hundred and twenty (120) days from the date of submission of application by Contractor seeking such clearance. My clarifications/additional information required by the Government shall be asked by it within sixty (60) days from the date of submission of the application by Contractor. The final decision by the Government shall be conveyed within sixty (60) days from the receipt of such clarifications/additional information from the Contractor. In case Government fails to convey any decision to the Contractor, such application for the clearance by the Contractor shall be deemed to have been approved by the Government.

14.6 The Contractor shall ensure that:

- (a) Petroleum Operations are conducted in an environmentally acceptable and safe manner consistent with modern oil field and petroleum industry practices and that such Petroleum Operations are properly monitored;
- (b) the pertinent completed environmental impact studies are made available to its employees and to its contractors and Subcontractors to develop adequate and proper awareness of the measures and methods of environmental protection to be used in carrying out the Petroleum Operations; and
- (c) the contracts entered into between the Contractor and its contractors and Subcontractors relating to its Petroleum Operations shall include the provisions stipulated herein and any established measures and methods for the implementation of the Contractor's obligations in relation to (lie environment under this Contract.

14.7 The Contractor shall, prior to conducting any drilling activities, prepare and submit for review by the Government contingency plans for dealing with Oil spills, fires, accidents and emergencies, designed to achieve rapid and effective emergency response. The plans referred to above shall be discussed with the Government and concerns expressed shall be taken into account.

14.7.1 In the event of an emergency, accident, Oil spill or fire arising from Petroleum Operations affecting the environment, the Contractor shall forthwith notify the Government and shall promptly implement the relevant contingency plan and perform such Site Restoration as may be necessary in accordance with modern oilfield and petroleum industry practices.

14.7.2 In the event of any other emergency or accident arising from the Petroleum Operations affecting the environment, the Contractor shall take such action as may be prudent and necessary in accordance with modern oil field and petroleum industry practices in such circumstances.

14.8 In the event that the Contractor fails to comply with any of the terms contained in Article 14.7 within a period specified by the Government, the Government, after giving the Contractor reasonable notice in the circumstances, may take any action which may be necessary to ensure compliance with such terms and to recover from the Contractor, immediately after having taken such action, all costs and expenditures incurred in connection with such action together with such interest as may be determined in accordance with Section 1.7 of Appendix C of this Contract.

14.9 On expiry or termination of this Contract or relinquishment of part of the Contract Area, the Contractor shall:

(a) subject to Article 27, remove all equipment and installations from the relinquished area or former Contract Area in a manner agreed with the Government pursuant to an abandonment plan; and

(b) perform all necessary Site Restoration in accordance with modern oilfield and petroleum industry practices and take all other action necessary to prevent hazards to human life or to the property of others or the environment.

14.10 The Contractor shall prepare a proposal for the restoration of site including abandonment plan and requirement of funds for this and any annual contribution in accordance with the scheme framed by Government to the Site Restoration fund. This will be submitted along with the annual Budget for the consideration and approval of the Management Committee.

14.11 Subject to Section 3.2 of Accounting Procedure, any Site Restoration fund scheme formulated by Government and subject to provisions of this Contract, any and all costs incurred by Contractor pursuant to this Article shall be cost recoverable including but not limited to sinking funds established for abandonment and restoration of Contract Area.

14.12 In this Article, a reference to Government includes the State Government.

14.13 Where the Contract Area is partly located in areas forming part of certain national parks, sanctuaries, mangroves, wetlands of national importance, biosphere reserves and other biologically sensitive areas passage through these areas shall generally not be permitted. However, if there is no passage, other than through these areas to reach a particular point beyond these areas, permission of the appropriate authorities shall be obtained.

14.14 The obligations and liability of the Contractor for the environment hereunder shall be limited to damage to the environment which: (a) occurs after the Effective Date; and results from an act or omission of the Contractor.

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 land mark 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.

JUDGMENT

The court held that any enterprise that is engaged in an inherently dangerous activity is ‘absolutely’ liable to compensate all those affected by an accident. The key feature of the judgment was the principle of ‘absolute liability’, in which no exceptions (such as an ‘act of God’) are brooked.

IMPACT

The case took place soon after the Bhopal Gas Tragedy and was keenly watched as an instance of how the courts would deal with companies responsible for environmental disasters. Unfortunately, the complex court litigation around the Bhopal Gas Tragedy was an example of what not to do in such cases.

Article 19(1)(g)

(g) to practice any profession, or to carry on any occupation, trade or business.

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.

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 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.

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

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.

Small Hydro Power Developers' ... vs Transmission Corporation of A.P. ... on 8 May, 2008

The said decision itself is an authority for the proposition that what is granted can be withdrawn by the Government except in the case where the doctrine of promissory estoppel applies. The said decision is also an authority for the proposition that the promissory estoppel operates on equity and public interest.

Thus, the State has discretion to alter its policy. The courts cannot interfere with the policy decision unless it is found that the decision to change the policy is arbitrary, unreasonable and unfair. In the instant case, the State Government has not changed or withdrawn its policy of incentivising the generation through renewable sources of energy. The policy directives contained in GOMs are also not inconsistent with the expressed or implied provisions of any statute. Rather the policy is in conformity with the preamble to the Electricity Act, 2003 and **Article 48A** of the Constitution.

As seen from above the thrust of the National Electricity Policy is upon the use of non-conventional sources of energy to augment generation and for production of green energy. In fact the electricity policy as also the MNES policy, the preamble to the Electricity Act, 2003 and Section 61(h) thereof and GOMS 93 are in tune with the provisions of **Article 48A** and 51A (g) of the Constitution and treaties, conventions and protocols on the issues relating to environment.

In order to support conservation of environment, Constitution was amended by 42nd Amendment Act, 1976. By virtue of the amendment, **Articles 48A** and **Article 51A(g)** were inserted in the Constitution. **Article 48A**, inter alia, provides that the State shall endeavour to protect and improve the environment. Similarly **Article 51A(g)**, inter alia, casts a duty on every citizen of India to protect and improve the natural environment. **Articles 48A, Article 51 A(g)**, the Preamble to the Electricity Act, National Electricity Policy, MNES policy and GOMS 93 reflect the concern for ecology. This concern stems from the ill effects of pollution and global warming. Since the environment needs to be protected, adequate and pre-empting measures are required to be taken to incentivise the generation of power through renewable sources of energy. But in case the original PPAs are re-opened for fixing higher wheeling charges than what is provided in the G.O.Ms. No. 93., there is bound to be a set back to the generation of power through renewable sources of energy.

The hike in the wheeling charges of power generated by plants based on renewable sources of energy does not serve the purpose of promotion of power generation through non-conventional sources. Setting up of power plant requires heavy investment and it has a long gestation period. It is also well known that till the technologies are improved, the cost of production of power through renewable sources of energy could be higher than the production of power through conventional sources of energy. The impugned increase in wheeling charges of energy produced by renewable sources is against the preamble and Sections 61(h) of the Electricity Act, the National Electricity Policy, GOMs 93 & 112 of the Government of Andhra Pradesh, MNES policy and thrust of **Article 48A** of the Constitution.

In *Chhattisgarh Biomass Energy Developers Association and Ors. v. Chhattisgarh S.E.R.C. and Ors.* 2007 APTEL 711, it was observed that where Power Purchase Agreements between distribution licensees and the generating companies utilizing renewable sources of energy are in conformity with MNES guidelines or various policy guidelines, the agreements are not to be tinkered with.

The Commission has not considered the impact of the aforesaid decisions, the preamble and Section 61(h) of the Electricity Act, 2003, the National Electricity Policy, MNES guidelines, **Article 48A** and 51A(g) of the Constitution and the aspect relating to protection of environment, which has been the subject matter of various treaties and conventions.

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 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". 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**.

In *Mohan Kumar Singhania & Ors. v. Union of India & Ors.*, 1992 Supp (1) SCC 594, 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) 4 SCC 7, 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.

In *T.N. Godavarman Thirumalpad v. Union of India & Ors.*, (2002) 10 SCC 606, a three-Judge Bench of this Court read **Article 48-A** and **Article 51-A** together as laying down the foundation for a jurisprudence of environmental protection and held that "Today, the State and the citizens are under a fundamental obligation to protect and improve the environment, including forests, lakes, rivers, wild life and to have compassion for living creatures".

In *State of W.B. & Ors. v. Sujit Kumar Rana*, (2004) 4 SCC 129, **Articles 48** and **51-A(g)** of the Constitution were read together and this Court expressed that these provisions have to be kept in mind while interpreting statutory provisions.

One of the other reasons which has been advanced for reversal of earlier judgments was that at the time when these earlier judgments were delivered **Article 48(A)** and **51(A)** were not there and impact of both these **Articles** were not considered. It is true that **Article 48(A)** which was introduced by the 42nd Constitutional Amendment in 1976 with effect from 3.1.1977 and **Article 51(A)** i.e. fundamental duties were also brought about by the same amendment. Though, these **Articles** were not in existence at that time but the effect of those **Articles** were indirectly considered in the *Mohd. Hanif Qureshi's* case in 1958. It was mentioned that cow dung

can be used for the purposes of manure as well as for the purpose of fuel that will be more eco-friendly.

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

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**.

In *Mohan Kumar Singhania & Ors. v. Union of India & Ors.*, 1992 Supp (1) SCC 594, 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) 4 SCC 7, 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.

In *T.N. Godavarman Thirumalpad v. Union of India & Ors.*, (2002) 10 SCC 606, a three-Judge Bench of this Court read **Article 48-A** and **Article 51-A** together as laying down the foundation for a jurisprudence of environmental protection and held that "Today, the State and the citizens are under a fundamental obligation to protect and improve the environment, including forests, lakes, rivers, wild life and to have compassion for living creatures".

In *State of W.B. & Ors. v. Sujit Kumar Rana*, (2004) 4 SCC 129, **Articles 48** and **51-A(g)** of the Constitution were read together and this Court expressed that these provisions have to be kept in mind while interpreting statutory provisions.

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.

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 anti-discrimination standards, the need for social participation and the protection of vulnerable groups.