



# **FACULTY OF JURIDICAL SCIENCES**

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**NAME OF FACULTY: Mohammad Aqib**

# Lecture-10



## LECTURE 10: Constitution and Environment

Before the 42nd Amendment - The Constitution of India came into force on 26<sup>th</sup> January, 1950. At that time it did not contain any specific provision dealing directly with environment. Only provision which was of some significance was Article 47 of the Directive Principles of State Policy which reads:

**“The State shall regard the raising of the level of nutrition and standard of living of its people and improvement of public health as among its primary duties.”**

Article 21 of the Constitution which deals with the right to life and personal liberty was not of much help in the beginning as it was given a very restricted and narrow meaning. This Article runs as follows:

**“No person shall be deprived of his life or personal liberty except according to procedure established by law.”**

But in due course of time the problem of pollution and environment started drawing attention of environmentalists. In the year 1972 our Prime Minister late Mrs. Indira Gandhi attended the United Nations Conference on Human Environment and Development at Stockholm. In that conference the following two resolutions were passed which are known as the Magna Carta of our environmental law:

- (a) Man has the fundamental right to freedom, equality and adequate conditions of life in an environment of quality that permits a life of dignity and well-being; and
- (b) Man bears a solemn responsibility to protect and improve the environment for present and future generations.

**42nd Constitution Amendment and after** - In 1976, under the leadership of late Mrs. Indira Gandhi, the Constitution's 42nd Amendment was passed and provisions regarding the protection of environment were incorporated into it. In the Chapter of Directive Principles of State Policy, a new provision in the form of

Article 48A was incorporated which runs as follows:

**“48-A. Protection and Improvement of Environment and safeguarding of Forests and Wildlife - The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.”** Apart from this provision, a new provision in the form of

“**Fundamental Duties**” as Article 51A was also incorporated by the 42nd Constitution amendment. Sub-clause (g) of Article 51A is important which provides

“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.”

The above mentioned constitutional provisions impose two-fold responsibilities. On the one hand, they give directive to the State for the protection and improvement of environment and on the other they cast a duty on every citizen to help in the preservation of natural environment.

The scope of Article 51A (g) was examined by the High Court of Rajasthan in **L. K. Koolwal v. State of Rajasthan**. Under the Rajasthan Municipalities Act, 1959, the Municipal Authority has primary duty “to clean public streets, sewers and all spaces and places, not being private property, which are open to the enjoyment of public, removing of noxious vegetation and all public nuisances and to remove filth, rubbish, night soil, odor or any other noxious or offensive matter.” The petitioner L. K. Koolwal moved a writ petition under Article 226 of the Constitution before the Rajasthan High Court showing that the municipality has failed to discharge its “primary duty” resulting in the acute sanitation problem in the city of Jaipur which is hazardous to the life of the citizens of Jaipur.

The High Court while pronouncing the judgment explained the true scope of Article 51A in the following term “We can call Article 51A ordinarily as the duty of the citizens. But in fact it is the right of the citizens as it creates the right in favour of citizens to move to the Court to see that the State performs its duties faithfully and the obligatory and primary duties are performed in accordance with the law of the land. Article 51-A gives a right to the citizens to move the Court for the enforcement of the duty cast on State instrumentalities, agencies, departments, local bodies and statutory authorities created under the peculiar law of the State.” Thus, Article 51-A has come as a boon so far as environmental protection is concerned. But its benefit can be availed of only if people are alive to their duties regarding protection of environment. Article 51A (g) if read with Article 51A (j) it may give probably a better result Article 51A (j) reads as follows:

“It shall be the duty of every citizen of India to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievements.”

Strictly speaking no constitution deals with a matter such as environmental protection. Because any constitution contains only the rule of law in relation to the power, structure, allocation and manner of exercise. Besides Indian Constitution is a bulky document and brevity is the character

of an ideal Constitution. Hence from the point of view of the principles of the constitutional law as well as, the length of the Constitution it was impossible to have any such provision safeguarding the healthy environment. Therefore till the subsequent amendments the constitutional text of India was without any specific provision for the protection and promotion of the environment. However the seeds of such provision could be seen in Article 47 of the constitution which commands the State to improve the standard of living and public health. To fulfill the constitutional goal, it is necessary that the State should provide pollution free environment.