



Jayanta Bhattacharya
Hon. Chief Editor

The right side of law for an executive in the mines

Law is all pervading. Almost all your actions are regulated by law except a few. We have all sorts of law like personal, family, civil, criminal, revenue, commercial, taxation, public and private law, international law and so on. Law can be statutory, customary, moral or ethical, ecclesiastical, etc. But it is well known that ignorance of any of these laws cannot constitute an excuse. You are not permitted to plead ignorance as a defense to escape the rigors of law. If it is so, it is very easy for any person can put forward ignorance as a defense though he was actually aware of the law and its full consequences. The law enforcement machinery shall come to a grinding halt if ignorance is accepted as a defense.

An executive in mines confront many situations where there are possibilities of violating law, both knowingly and unwittingly. Some time he or she feels they are on the right side of law because they are doing for the nation/company and because they think they will be taken care of by the company when in trouble. Risk taking behavior and bravado can also be the cause. But they must know that their individual legal behavior and response is mostly important in terms of the law, ahead of their affiliation to any organization. And there are limitations to the extent they can exercise authority in workplace and outside.

The Constitution of India (Bhāratīya SaCvidhāna)

- Is the supreme law of India. The document lays down the framework that demarcates fundamental political code, structure, procedures, powers, and duties of government institutions and sets out fundamental rights, directive principles, and the duties of citizens. It is the longest written constitution of any country.
- It imparts constitutional supremacy (not parliamentary supremacy, since it was created by a constituent assembly rather than Parliament) and was adopted by its people with a declaration in its preamble. Parliament cannot override the constitution.
- It was adopted by the Constituent Assembly of India on 26 November 1949 and became effective on 26 January 1950. The constitution replaced the Government of India Act 1935 as the country's fundamental governing

document, and the Dominion of India became the Republic of India. India celebrates its constitution on 26 January as Republic Day.

- The constitution declares India a sovereign, socialist, secular, and democratic republic, assures its citizens justice, equality and liberty, and endeavors to promote fraternity. The original 1950 constitution is preserved in a helium-filled case at the Parliament House in New Delhi. The words "secular" and "socialist" were added to the preamble by 42nd amendment act in 1976, during the Emergency.

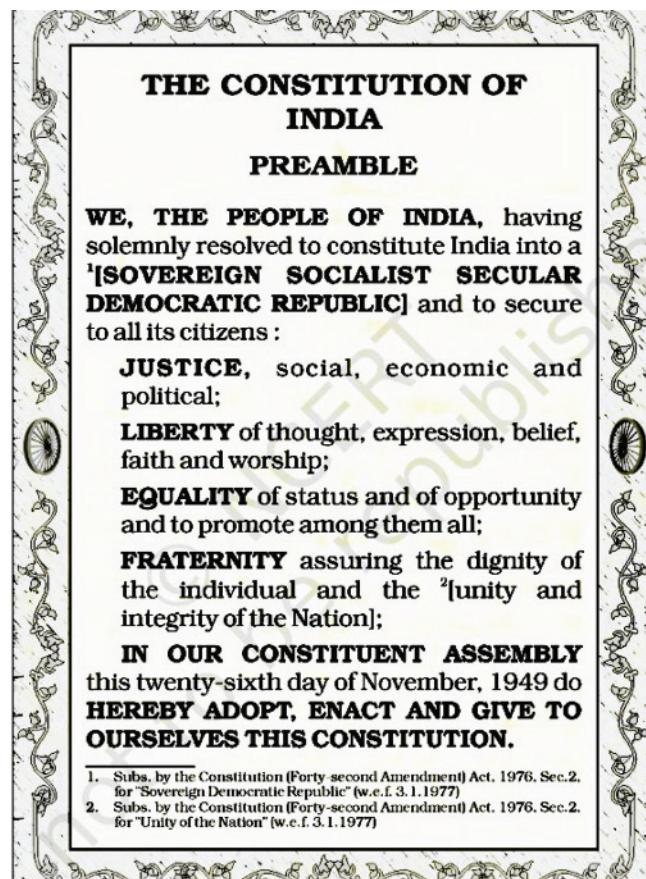


Fig.1: Preamble of the Indian Constitution

Valuing Constitution

India has been declared a sovereign, secular, Democratic, Republic through the Preamble of the Constitution of India. India is defined by its constitution. And the constitution defines it as:

- Sovereign State – India is free to formulate its internal and foreign policy and free to maintain relations with any foreign state.
- Socialist State – The aim of the state is to establish socialist society which is free from exploitation of man by man and in which social economic and political justice is provided to all.
- Secular State – The state has no religion of its own, it does not discriminate against any religion by imposing restrictions upon it
- Democratic State – The preamble also declares India to be a democratic state in which the supreme power rests in the hands of the people.
- Republic- The President of India is elected for a fixed term by the indirect vote of the people.

The above definition guides the executive in the following:

- a. to be impartial in providing opportunities to the people asking for help.
- b. when to listen to a population they must listen to the representative people of all ages, gender, caste and tribe etc.
- c. they should make a consensus-based decision rather than individual decision
- d. Poor and disenfranchised people should always be preferred ahead of the rest in any kind of dispensation.

Fundamental Rights

Fundamental rights have been included into the chapter 3rd of the constitution from Article- 12 to 35

1. Right to Equality
2. Right to Freedom
3. Right Against Exploitation
4. Right to Religious Freedom
5. Cultural and Educational rights
6. Right to Constitution Remedies
7. Right to Property, an Ordinary Right

The executives should heed to these when dealing with the people:

- a. Every citizen is equal and so there cannot be any discriminatory behavior or action.
- b. Every person is free to choose what she or he decides to do without obstructing others.
- c. In the same work or job the nominal compensation should be same and as per the government mandate

- d. Cultural and educational rights conform to freedom to participate in the cultural events of their choice
- e. Unless considered for public purpose and initiated solely by the government, people have right to property related to land. For other properties, unless objectionable, the state or any organization does not have any right on any individual's property.



Fig.2: Fundamental rights of citizens in India

Directive Principles

The Directive Principles of State Policy of India are the guidelines or principles given to the institutes for governing the State of India. These are provided Part IV (Article 36-51) of the Constitution of India, are not enforceable by any court, but the principles laid down there in are considered 'Fundamental' in the governance of the country, making it the duty of the State to apply these principles in making laws to establish a just society in the country. Directive Principles are classified under the following categories: economic and socialistic, political and administrative, justice and legal, environmental, protection of monuments, peace and security.

There is no need of any constitutional amendment, and simple legislation by the Parliament is adequate to implement the Directive Principles as applicable laws per Article 245 as they are already enshrined in the constitution.

Under the directive principles the State shall strive to

1. minimize the inequalities in income and endeavour to eliminate economic inequality as well as inequalities in

- status and opportunities.
2. provide adequate means of livelihood for all citizens, both men and women as well as equal pay for equal work.
 3. Child abuse and exploitation of workers should be prevented.
 4. provide free legal aid to ensure that equal opportunities for securing justice.
 5. The State shall also work for organisation of village panchayats and help enable them to function as units of self-government per Article 40.
 6. should work for the economic and educational upliftment of scheduled castes, scheduled tribes and other weaker sections of the society per Article 46.

An executive in the mine is also an executive of the state, he/she must uphold the directive principles by their action.

Part IV DIRECTIVE PRINCIPLES OF STATE POLICY

36. In this part, unless the context otherwise requires, "the State" has the same meaning as in Part III.

37. The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

38. ¹[(1)] The State shall strive to promote the welfare of the people by securing the protection as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

²[(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.]

39. The State shall, in particular, direct its policy towards securing –

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

¹Art. 38 renumbered as cl. (1) thereof by the Constitution (Forty Act, 1978, s. 9 (w.e.f.20-6-1979).

²Ins. by s. 9, ibid.(w.e.f 20-6-1979).

Fig.3: Directive Principles

Fundamental Duties

Article 51-A Part IVA of the Constitution refer to the Fundamental duties. It shall be the duty of every citizen of India –

1. To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
2. To cherish and follow the noble ideals which inspired our national struggle for freedom;
3. To uphold and protect the sovereignty, unity and integrity of India;
4. To defend the country and render national service when called upon to do so;
5. 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;
6. To value and preserve the rich heritage of our composite culture;
7. To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
8. To develop the scientific temper, humanism and the spirit of inquiry and reform;
9. To safeguard public property and to abjure violence;
10. To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement;
11. Parent or guardian to provide opportunities for education to his child or ward between the age of six and fourteen years.

One can note that, apart from many other things, it is the constitutional duty of all citizens to protect and improve forests, lakes, rivers and wild life.

Federalism in India

Federalism in India refers to relationship between the central government and the state governments of India. The constitution of India establishes the structure of the Indian government. Part XI of the Indian constitution specifies the distribution of legislative, administrative and executive powers between the union government and the different States of India. The legislative powers are categorised under a union list, a state list and a concurrent list, representing, respectively, the powers conferred upon the Union government, those conferred upon the state governments and powers shared among them.

Legislative powers

The division of powers are defined by the constitution and the legislative powers are divided into three lists:

Union List : Authority with the Central Government

Union List consists of 100 items (earlier 97) on which the

parliament has exclusive power to legislate. This includes: defense, armed forces, arms and ammunition, atomic energy, foreign affairs, war and peace, citizenship, extradition, railways, shipping and navigation, airways, posts and telegraphs, telephones, wireless and broadcasting, currency, foreign trade, inter-state trade and commerce, banking, insurance, control of industries, regulation and development of mines, mineral and oil resources, major minerals, elections, audit of Government accounts, constitution and organisation of the Supreme Court, High courts and union public service commission, income tax, customs and export duties, duties of excise, corporation tax, taxes on the capital value of assets, estate duty and terminal taxes

State List: Authority with the State Government

State List consists of 61 items (earlier 66 items). Uniformity is desirable but not essential on items in this list: maintaining law and order, police forces, healthcare, transport, land policies, electricity in the state, village administration, and minor minerals etc. The state legislature has exclusive power to make laws on these subjects. In certain circumstances, the parliament can make laws on subjects mentioned in the State List, but to do so the Rajya Sabha (Council of States) must pass a resolution with a two-thirds majority that it is expedient to legislate in the national interest. Though states have exclusive powers to legislate with regards to items on the State List, articles 249, 250, 252, and 253 mention situations in which the Union government can legislate.

Concurrent List: Joint Responsibilities

Concurrent List consists of 52 (earlier 47) items. Uniformity is desirable but not essential on items in this list. The list mentions: marriage and divorce, transfer of property other than agricultural land, education, contracts, bankruptcy and insolvency, trustees and trusts, civil procedure, contempt of court, adulteration of foodstuffs, drugs and poisons, economic and social planning, trade unions, labor welfare, electricity, newspapers, books and printing press, NS stamp duties.

MAJOR MINERALS

India's major mineral resources include Coal (4th largest reserves in the world), iron ore, manganese ore (7th largest reserve in the world as in 2013), bauxite (5th largest reserve in the world as in 2013), chromite, oil and natural gas, diamonds, limestone and thorium. (Disclaimer: This list is taken from Wikipedia and edited, may not be an exclusive list)

MINOR MINERALS

As of 2017 (<https://ibm.gov.in/index.php?c=pages&m=index&id=1027>), these are the minor minerals as per Indian Bureau of Mines (Section 30): barytes, bentonite, calcite, corundum and sapphire, diasporite, dolomite, dunite and pyroxinite, felspar, fireclay, fuller's earth, granite, gypsum and selenite, kaolin, ball clay, other clays and shale, laterite, marble, mica, ochre, other calcareous materials, pyrophyllite,

quartz and other silica minerals, slate, sandstone and other dimension stones, talc, soapstone and steatite.

- the federal structure of India, the State Governments are the owners of minerals located within their respective boundaries. The Central Government is the owner of the minerals underlying the ocean within the territorial waters or the Exclusive Economic Zone of India.
- In this context, the entry at serial No.23 of List II (State, list) to the Constitution of India states, 'Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.'
- The entry at serial No.54 of List I (Central list) to the Constitution of India states, 'Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.'

JURISDICTIONS

In pursuance to the entry at serial No. 54 of List I, the Central Government have framed legislation titled Mines & Minerals (Development and Regulation)(MMDR) Act, 1957 as Central Act No. 67 of 1957.

The State Governments grant the mineral concessions for all the minerals located within the boundary of the State, under the provisions of the MMDR Act, 1957, and Mineral Concession Rules (MCR), 1960 framed thereunder. Under the provisions of the MMDR Act, 1957 and MCR, 1960, prior approval of the Central Government is required in the following cases:

1. Granting mineral concessions in respect of minerals specified in the First Schedule to the Mines and Minerals (Development and Regulation) Act, 1957.
2. Granting areas under reconnaissance permit prospecting licence and mining lease to a person in excess of limits prescribed under Section 6(1)(a)(a), 6(1)(a) and Section 6(1)(b) respectively of the Act.
3. Imposing special condition(s) in mining lease under Rule 27(3), in prospecting licence under Rule 14(3) and in reconnaissance permit under Rule 7(3) of Mineral Concession Rules, 1960 over and above the conditions prescribed in MCR, 1960.
4. Granting mineral concession in an area previously reserved by the Government, or previously held under a mineral concession, without first notifying the same by relaxing the provisions of Rule 59(1) of MCR, 1960 under Rule 59(2).
5. Revision of any order made by State Government with respect to any mineral except a minor mineral.
6. Relaxation of Rules in special cases under Section 31 of the Act, keeping in view the interest of mineral development.

(text courtesy: <https://mines.gov.in/UserView/index?mid=1338>)