CHAPTER–3

INDIAN CONSTITUTIONAL PROVISIONS FOR SUSTAINABLE DEVELOPMENT AND ENVIRONMENT PROTECTION

3.1. INTRODUCTION

Environment protection and preservation is integral part of Indian religious practices and beliefs\(^1\). It is belief of all Indian religions that to preserve the environment is one of the ways to serve the humanity and God. Undoubtedly, Indian Constitution implements the religious faith of Indian community on environment preservation by the insertion of various provisions concerning protection of natural resources like forests, lakes and wild life. Moreover, keen participation in various international conventions, conferences and declarations shows that India’s rather affirms that, most of the issues, which the humanity is facing today, are revolving around the human beings. Environmental pollution and unsustainable pattern of development is such kind of issue. It is emphasized that these issues are not for single nation, therefore it is the obligations of the all nations whether developed or developing, rich or poor must concentrate to find out the solutions of these problems. Undoubtedly, various resolutions have been taken by world community through international conferences, conventions, declarations to resolve the above said issues. The first international conference for environment preservation and sustainable development is Stockholm Declaration on Human Environment, 1972, in which India participated and promised to implement the principles of Stockholm declaration in regional level. In other words, one can say that consciously, it was initial step of the Indian Government to fight against the problem of environment pollution and unsustainable development.

Development that is environment friendly and meets the needs of people is the object set for governance by the modern welfare governments for themselves. Various laws passed by Parliament and numerous provisions inserted in Constitution regarding the protection of environment and sustainable development are an indication towards the earnest approach of the government in this direction. We have the satisfaction that our

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\(^1\) According to Hindu conception earth, water, air, energy and space are basic elements and are essential for sustainable life. Moreover in Sikhism the concept of Kar Sewa (voluntary Service) of cleansing and constructing has important place in the lives of the Sikhs.
The Constitution of India being the highest law embodies in itself a greater national commitment to preserve and protect the clean and healthy environment. It guarantees right to life and personal liberty. They are further fortified by various pronouncements of Indian judiciary. To achieve the above said object, the Indian Constitution has imposed an obligations both on the State as well as the citizens to protect and preserve the natural environment. These provisions form the kernel of our constitutional mandate and highlight the national consensus on the importance of environmental protection and improvement, to lay the foundation for a jurisprudence of environmental protection. Moreover, from Stockholm Declaration, 1972 to Rio+20 Declaration, 2012 and BRICS Summit, 2014, India always has been a key player among the nations, which are committed for environment protection and sustainable development principles.

### 3.2. CONSTITUTIONAL PROVISIONS FOR ECOLOGICAL PRESERVATION AND BALANCED DEVELOPMENT

At the time of Constituent Assembly debates, there was no particular provision regarding environment protection. At that time, environmental issues were left out. But on the other hand, judiciary was working very actively. Judicial consciousness in the sphere of environment protection and balanced progress makes government and people...
more conscious about the concept of sustainable development. Moreover, national environmental movements in India have also played a very important role to create environmental renaissance. The rise and development of environmental movements in India was considered since the later half of 1960’s. The primary causes of these movements are undoubtedly the nature of development model adopted by India in the said period. Appiko Movement is one of the forest-based environmental movements in India, often looked at as a continuation of the Chipko Movement.\(^5\) The Movement took place in the Uttara Kannada District of Karnataka in the Western Ghats. It was for saving forests from destruction by felling trees. Further, Silent Valley Movement\(^6\) was led by Kerala Sastra Sahitya Parishad (KSSP) with the demand that the government should stop the execution of the project, because that particular project is harmful to environment and eco-system. It has 8,950 hectares of rainforest, one of the few remaining rainforests in India, with valuable flora and fauna. In 1973, the State Government of Kerala decided to build a dam across a valley in the Kunthipuzha River, which flows through the silent valley. The proposed project would generate 200 MW of electricity, and form the basis for regional economic development. However, the proposed project was not ecologically viable, as it would drown a chunk of the valuable rainforest of the valley and threaten the life of a host of endangered species of both flora and fauna. Hence, by 1979, students, rural school teachers, science forums, journalists, citizens, and voluntary organizations made a well-reasoned case against the project.\(^7\) Apart from above, Chilika Bachao Andolan, Baliapal Movement, The Movement

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\(^5\) Chipko Andolan was initiated under the leadership of Shri Sunder Lal Bahugana (a noted environmentalist) in early 1970s in protection against indiscriminate cutting of trees and deforestation.

\(^6\) Padam Nepal, Environmental Movements in India- Politics of Dynamism and Transformations, Ed. 1st, Authors Press, 2009, p. 105-06

\(^7\) Ibid.

\(^8\) Chilika Bachao Andolan one of the most discussed environmental movements in India. The movement began as a grassroots movement and in subsequent years it evolved in to an organized mass movement. Although the movement has achieved the initial objective of preventing the entry of big business houses like the Tata’s into the commercial aquaculture of prawns, thereby threatening the livelihood of the poor, yet the movement continues with greater environmental and ecological objectives. It has been a movement that has attracted a wide academic interest, a movement that highlighted the importance of local communities in the maintenance of natural environment. (See, Padam Nepal, Environmental Movements in India- Politics of Dynamism and Transformations, Ed. 1st, Authors Press, 2009, p. 108).

\(^9\) Baliapal movement is an agitation against the establishment of the National Testing Range (NTR), India’s first missile testing project in the Balaipal and Bhograi blocks of Orissa’s Balasore district.
against Tehri Dam, and Narmada Bachao Andolan are evidenced that modern Indian nation state favoured the development strategies based on the eco-friendly development.


Till 1976, the idea of ecological safety was set apart from legislative policies, but Articles like 14, 19, 21, 32, 39, 42, 47, 48, 49 etc. had an indirect impact on environment and reinforcing sustainable development which was hitherto an ignored objective. The constitution being a grundnorm of the land shall be binding not only on the citizens but on the non-citizens and the States itself\(^{10}\). In pursuance of Stockholm Declaration, Constitution 42\(^{nd}\) Amendment, 1976 was inserted in the constitution. It was a successful attempt of legislature to secure the protection of environment. Part-IV\(^{11}\) & IV-A\(^{12}\) of constitution is to realize the abatement of pollution for ecological safety. Above facts makes it clear that India has unique constitution with numerous provisions relating to environment preservation and sustainable development. These are listed and discussed as below:

### 3.2.1. Preamble

The public, fiscal and opinionated righteousness sembodied inside preamble comprises in itself the theme of environmental protection as well. The 42\(^{nd}\) Amendment has inserted three words in the preamble i.e. *secularism, socialism*\(^{13}\) and *integrity*. These

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11 Constitutional Directives to State Governments.
12 Fundamental Duties.
13 The word ‘socialism’ was added to the preamble and has always been the goal of Indian Constitution, even prior to the amendment of 1976. (P.S. & Nistha Jaswal, *Environmental Law*, Pioneer publication, 2008, p.31).
concepts are implicit in the Constitution. The amendment merely spells out clearly these concepts in the preamble\textsuperscript{14}. \textit{Now the preamble comprehends as thus:}

\begin{quote}
\textit{“We, the people of India, having solemnly resolved to constitute India into Sovereign, Socialist, Secular, Democratic, Republic and ……….”}
\end{quote}

Though India has always been following the ideal of socialistic society, yet it was for the first time that the ideal was given a constitutional recognition by the 42\textsuperscript{nd} Amendment Act, 1976\textsuperscript{15}. In this regard, S.K. Verma explains that “ecological infectivity is a common dilemma as it affects to all. The transformation from the laissez faire society to the socialistic pattern of the society raised works and responsibilities of the government and State are burdened with the weighty tasks like the assurance of societal justice and abolishment of community vulnerabilities. Continuous contamination of nature is most serious social problems that a nation may face. The developing countries must take a lesson from the enormity of the problem of environmental pollution that the developed countries are struggling”\textsuperscript{16}. India was participant to the Stockholm Conference and consequently was under an obligation to give effects to the recommendations made by the said conference. So, the 42\textsuperscript{nd} Amendment Act, 1976, has introduced the words ‘Socialist, Secular’. Term \textit{socialism} stresses more attention towards the social problems than any individual problem, and the environmental conservation is one of them.

\textbf{3.2.2. Fundamental Rights}

Principle 1 of the Stockholm Declaration provides that:

\begin{quote}
\textit{“Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generation”}.
\end{quote}

Above given principle finds reflection in series of fundamental rights, which are explained as below:

\textsuperscript{16} S.K. Verma, \textit{Climate Change: Copenhagen and Beyond}, 39\textsuperscript{th} Annual Conference of Indian Society of International Law, held on 24-25 April, 2010 at New Delhi.
3.2.2.1. Article 14: Right to Equality

To protect persons against arbitrary and unfair State actions is one of the agenda of equality clause. This Article being a general Article under Part III plays a very important role because it prohibits arbitrariness. It will not be wrong to say that coexistence of equality and arbitrariness is impossible. The new dimension of the right to equality which excludes arbitrariness is often used by judiciary for quashing the permission of construction granted arbitrarily by State without giving due importance to environmental concern.

3.2.2.1.1. Arbitrary Sanction of Authorities in Environmental Matters

The judiciary has on several occasions declared that the arbitrary sanction of the authorities in environmental matters as unconstitutional\textsuperscript{17}. Article 14 has been frequently invoked by Indian judiciary for environment protection. Its contents contain witnessed effectuation especially in cases involving mining and stone crushing activities. Arbitrary grant of lease and unwarranted operation of mines may lead to destruction of wild life and nature. When the mining activities resulted in pollution of Mussoorie Hill range forming part of Himalayas, then the issue of development and environment was brought into sharp focus for the first time.

In 2010, the Communist Party of India (CPI) was urged to then Prime Minister Dr. Manmohan Singh to review the mega steel project awarded to South Korean Steel Gaint Posco in Orissa and urged him to immediately withdraw the arbitrary environmental clearance accorded to the project in light (Article 14) continued violence and atrocities against the local population. CPI has stated that the project did not provide any kind of direct benefit to the people of the locality or the economy of the country or the state and was rather aimed at stripping the area of its rich mineral resources\textsuperscript{18}.

3.2.2.2. Article 19(1) (a)

*Article 19(1) (a) assures to people of India “the freedom of speech and expression subject to reasonable restrictions”*. Due to societies progress, new means for communication have been developed, which can be used for the purpose of speech and

\textsuperscript{17} Ajay Hasia v. Khalid Mujib All India Reporter 1981 Supreme Court 487.
expression. Law prohibits us, to use these means violently, because public health demands control of the use of such appliance as produces loud noise by day or by night. Kerala High Court in *P.A. Jacob v. Superintendent of Police, Kottayam*, (AIR 1993 Ker 1), has also recognizes the above view and held that: “the freedom of speech does not include freedom to use loud speakers or sound amplifiers to cause noise pollution and risk to human health”. The Court has also made it very clear that “operation of mechanical sound amplifying devices conflict with quite enjoyment of men in park and freedom of speech does not involve freedom to use sound amplifiers to drawn out natural speech of others”.

3.2.2.2.1. Freedom to Know and Unsustainable Projects

The freedom to know which can be seen as a part of dignified life; has close link by Article 19 (1) (a). Right to know has proved very effective in environmental matters, where plans of the government may create danger for health and life of people. In light of this right every government plan regarding construction of any dam, nuclear plant, hazardous industrial units and thermal plants, which is unsustainable and have capability to distress the lives and well being of masses, must be given wide publication. The example of the Narmada Valley Project in Madhya Pradesh, Maharashtra and Gujarat, and the National Missile Testing Range at Baliapal in Orissa are relevant here. All these projects have resulted in popular agitations against government, which if sustained, may ultimately change the very approach of economic development that India has followed so far.

In this context, *Brundtland Report, 1987* has observed that:

“Some large projects... require participation of a different basis. Public inquiries and hearings on the development and environment impacts can help greatly in drawing attention to different point of view. Free access to information and the availability of alternative sources of technical expertise can provide an informal basis for public discussion when the environmental impact of a proposed project is particularly high, public scrutiny of the case should be subject to prior public approval, perhaps by referendum?”

Above discussion very much clears that Article 19(1) (a) and right to know both are inter-related to each other and backed by the environment protection laws and Sustainable Development principles.
3.2.2.3. Article 19(1) (g)

Satish Bhatia rightly explains that, “trade is not an end in itself but a means to an end - the goal of sustainable development. Sustainable development aims at maximizing net welfare of economic activities, along with maintaining or increasing the stock of economic, ecological and socio-cultural assets overtime. It implies the role of many non-economic and non-material environmental factors and equity aspects also”\(^{19}\). Article 19(I) (g) confers right upon the citizens “to practice any profession or to carry any occupation, trade or business and this particular right carries certain reasonable limitations as given under Article 19(6), which may be compulsory for the welfare of common masses”. By virtue of a range of judgments of Supreme Court as well as the High Courts, now it is well settled that the right to freedom of profession, occupation, trade or business is subject to the condition that it should not be a cause for environmental pollution. In Abhilash Textile v. Rajkot Municipal Corporation, AIR 1988 Gujarat 57, Court held that:

> “Though a person has a right to carry on any business of his choice, but there is no right to carry on any business inherently dangerous to society, because the interests of society are to be balanced with the interests of citizens to carry on business”\(^{20}\).

It is of common knowledge that now a day’s tanneries, dye factories, acid factories and hotels are source of environmental pollution. Several times, the Indian judiciary directed that closure of certain industries which were not showing any progress towards setting up of air pollution control system in compliance with its earlier order. But it does not mean that State is against the concept of industrialization. It is true industrial development is essential for handling the problems like unemployment, poverty etc. but the preservation of ecological balance has a paramount place, because it is concerned with the life and health of the masses. Thus, no polluting industry can be permitted to run under the garb of development if it results in public nuisance and imbalance of the ecosystem.


\(^{20}\) Abhilash Textile v. Rajkot Municipal Corporation, AIR1988 Guj. 57
Generally environmental and trade issues can broadly be classified into two categories i.e.

(a) **Local or National pollution problems** including problems like pollution of national soil, water and air resources. Mostly, the business activities are responsible for environmental degradation of such nature, which endanger the quality of life of its citizens.

(b) **Transboundary Pollution Problems** have a global impact. This would include pollution of transnational water resources, air pollution, ozone layer depletion etc.

No doubt industrial pollution contaminates environment. Trade or industrialization affects transnational water resources. When the harmful chemicals are released from the factories and mixed with the stream, rivers or ocean waters, there definitely affect the ground water. Moreover, today’s world is suffering from transfrontier air pollution. Trail Smelter Arbitration is one of the best examples of transboundary air pollution. Ozone layer depletion is another affect of transboundary pollution. Thus it is very clear that any trade or business which is dangerous to flora and fauna can’t be carried on in the name of fundamental right.

### 3.2.2.4. Article 21

Out of the constitutional provisions regarding environment, Article 21 is remarkable which includes all the finer graces of human civilization and thus embraces environment also and thus the credit goes to Indian judiciary to incorporate the internationally recognized ‘right to environment’ under domestic domain by its various pronouncements. Article 21 emphasizes that every citizen can claim dignified life. Though it does not explicitly mention the word environment but courts have given a wider interpretation to the term life by including in it the right to congenial environment for human existence. This Article creates a new way for all the persons to approach the courts for appropriate relief when they are deprived of hygienic environment. In this context Gurdip Singh rightly explained that:

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

23 For detail see; Chapter-V of present study.
“The right to clean environment is a fundamental right as well as a human right simply because it is the basic need for the survival of the human race. The contaminated environment will kill human beings. Thus, right to pure and decent environment underlies the right to life supporting ecosystem which sustains life.”

In various countries the rights to healthy environment and to sustainable development are fundamental human rights implicit in the right to life. Indian judiciary also recognized the idea of balanced progress as a part and parcel of Indian law in a series of cases and also elevated it to the status of a fundamental right implicit in Article 21 of the Indian Constitution. Moreover, numerous pronouncements have considerably widened the compass of “Article 21”. In Madhu Kishore v. State of Bihar court stated that:

“There are two conflicting, yet complementary, aspects involved. These are the right to development and the right to clean and healthy environment. Both had been declared an integral part of the right to life under Article 21”.

3.2.2.4.1. Clean wind is an Integral Part of Right to Life

The term ‘life’ has broad meaning. To inhale clean air is the basic requirement of dignified life. Following the above view, the Supreme Court, directed for the closure of a factory which was creating air pollution. Allahabad High Court held that “right to life as a fundamental right under Article 21, which includes the right of enjoyment of pollution free water and air.” Again, Apex Court observed that “the emissions resulted in violation of the right of life of the people living in the Taz Trapezium (TTZ) and it has also damaged the prestigious monument like the Taj”.

25 (i) *Art. Twenty Four of Greek Constitution 1975*, “The protection of natural and cultural environment constitutes a duty of the State”. (ii) *Article 45 of the Spanish Constitution 1978*, “everyone has right to enjoy an environment suitable for the development of person as well as the duty to preserve it”. (iii) *Article. Twenty One of Netherland Constitution* “it shall be the concern of authorities to keep the country and habitable and to protect and improve the environment”. (iv) *Art. 225 Brazilian Constitution* “everyone is entitled to an ecologically balanced environment”.
Further, the Karnataka High Court observed that “water and air pollution caused by stone crushing had adverse effects on human health, animals and vegetation, therefore, it violates the dignified life. The court also ordered crusher units to pay compensation to the victims of pollution. Moreover, in CNG case, the Supreme Court treated air pollution in Delhi caused by vehicular emissions as violation of Article 21 and therefore, by keeping in view the concept of sustainable development directed all commercial vehicles operating in national capital to replace to CNG gas type for conserving the healthiness of the masses. Thus, from the above discussion, it is very much obvious that Article 21 does not mean mere animal existence, it includes pollution free environment also.

3.2.2.5. Article 26: Freedom to Manage Religious Affairs

India is a secular country and all religions have equal protection. Everyone is free to manage its religious matters. But no religion allows us to spoil the decent environment on the name of God. Judiciary interpreted the above Article in its own way by keeping in view the sustainable development concept. With the development, the mode of prayer to God has been changed and it has become very problematic for the environment. According to Supreme Court of India, “no religion prescribes that the prayers are required to be performed through amplifiers or beating of drums”. Freedoms to administer religious affairs are subject to public order, goodness and wellbeing of masses. Where level of is beyond permissible limit then it would not be just and proper to permit the religious institutions to propagate through amplifiers. This view

31 See; Obaya Pujari v. Member Secretary, Karnataka State Pollution Control Board, Banglore, AIR 1999 Karn. 157.
32 See; Mahesh Chandar Mehta v. U.O.I. All India Reporter 1998 SCW 2813.
33 Art. 26 states: “Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—
(a) to establish and maintain institutions for religious and charitable purposes;
(b) to manage its own affairs in matters of religion;
(c) to own and acquire moveable and immovable property and
(d) to administer such property in accordance with law”.
35 Good health of the citizens is prime duty of the State. No one has right to use any noisy means which create pollution and damage to the health of citizens. So far as the Sustainable Development is concerned, it never permits us to use loudspeakers and D.J.’s on the name of prayer to religion.
36 This control affected through “Noise Pollution (Regulation and Control) Rules, 2000” is justified and can be regulated and enforced even against religious institutions.

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was expressed in *Haddon v. Lynch* 37, Court held that “the ringing of a church bell in the early morning hours of Sundays and public holidays was held to be a legal nuisance if it disturbs persons residing in the neighbourhood”. In another case, court held that “during the religious ceremonies normal sound may not be nuisance but if an attempt is made to play a band either with or without a compliment of singing it may cause nuisance”38.

3.2.2.6. Article 32:- Writs as remedies for Environment Protection and Sustainable Development

The importance of Article 32 can’t be underestimated. Therefore, “Dr. B.R. Ambedkar”stated39 that:

“If I was asked to name any particular article in this constitution as the most important an article without which this constitution would be a nullity I would not refer to any other article except this one. It is the very soul of the constitution and the very heart of it”.

The scope of these rights has been enlarged through judicial interpretations from time to time. Through various judicial announcements, it has been cleared that the right to life does not simply means an animal existence. The aggrieved person alleging complaints regarding environment pollution can move a petition for redressal of his grievances in the higher court of the land through Art. 32. In this context, the High Courts entertains much wider power for protection & improvement of environment under Art. 226.

For elimination of water and atmospheric pollution, the Supreme Court40 has directed the erring parties not to discharge effluents into river water without adequate treatment. In the *Taj Trapezium case*41, to protect and preserve the beauty of the Taj Mahal, certain industries affecting the nearby environment, were ordered to be closed down42. In another writ petition, directions were sought to prevent the pollutions released by industries in Tamil Nadu43. The Apex Court held that “though such industries are of vital importance in the development process of our country, they could not be permitted

37 1911VLR (Aus.).
38 Soletan v. De Held, 61ER 291.
41 AIR 1997 SC 734.
to continue their operations unless they set up pollution control devices”. The Court further held that “such industries could not be permitted to destroy ecology, degrade the environment and pose health hazards”. In this case, ‘sustainable development principles’ were evolved. Justice Kuldip Singh (popularly known as Green Judge) maintained that “Precautionary principle and the polluter pays principle are essential features of ‘sustainable development’.

Apart from above cases, series of public interest litigations (Discussed in Chapter-V) have drawn the attention of Supreme Court in the direction of environmental pollution and Apex Court has issued necessary directions in such public interest litigations so that the people living in the area can lead the pollution free life.

3.2.3. Directives Principles of State Policy and Environment Protection and Sustainable Development

No doubt, Part-IV is not judicially enforceable like basic rights provided under Part-III but according to Article 31-C “No law giving effect to the policy of the State towards securing these principles contained in clause (b) or Clause (c) of Article 39 of the Constitution shall to be deemed void on the ground that it is inconsistent with or takes away and abridges any of the fundamental rights conferred by Article 14 and Article 19”.

Originally, no notable provision regarding ecological preservation was inserted in the Part-IV. But cautious studies of Constitution reveals that certain Articles are related to the nature conservation are in existence even prior to 42\(^{nd}\) Amendment, 1976, which reads as under:

“Article 42”

“State to make provision for just and humane condition of work”.

“Article 43”

“Securing living wage is not enough. State should endeavor to ensure decent standards of life”.

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“Article 48”

“The State shall endeavour to organize agricultural and animal husbandry on modern and scientific lines and shall, in particular, take steps for the preserving and improving the breeds and prohibiting the slaughter of cows and claves and other milch and draught cattle”.

“Article 49”

“It shall be obligation of the State to protect every monument or place or object or artistic or historic interest, declared by or under law made by Parliament to be of national importance from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be”.

3.2.3.1. Post Forty Second Amendment (1977-2006)

3.2.3.1.1. Article 47

According to “Principle 1 of the Rio Declaration1992”

“Human beings are at the centre of concerns for sustainable development, and that they are entitled to a healthy and protective life, in harmony with nature”.

For balanced development, close linkage between environment, health and development is needed, because sustainable development is hardly possible without poverty eradication and healthy people. As per the Vision Statement on Environment and Human Health, July 2003:

“There is an urgent need to address the causes of ill health, including environmental causes, and their impact on development, with particular emphasis on women and children, as well as vulnerable groups of society, such as people with disabilities, elderly persons and indigenous people and on development”\textsuperscript{44}.

“Director General Emeritus, World Health Organization, Dr. Gro Harlem Brundtland”, insists that “Healthy life is an outcome of sustainable development as well as a powerful and undervalued means of achieving it. We need to see health both as precious asset in itself and as a means of stimulating economic growth and reducing poverty”.

Following the concept of sustainable development, Article 47 imposes a duty upon the State “to raise the level of nutrition and the standard of living of its people and improve public health”. Accordingly, the State Governments are primarily responsible to ensure formulation and enforcements of measures for raising the living standard of its public. As such individual State Governments have introduced various policies/programmes aimed at providing adequate public health facilities. The Central Government has also been rendering assistance and when requested, particularly for eradication of vulnerable disuses, environmental pollution, drug control and prevention of food adulteration, etc.

As per the report of Ministry of Health and Family Welfare, “government initiatives in public health sector have recorded some noteworthy successes overtime. Small Pox and Guinea worm disease have been eradicated from the country, Polio is on the verge of being eradicated; Leprosy, Kala Azar and Filariasis can be expected to be eliminated in the foreseeable future. There has been a substantial drop in the total fertility rate and infant mortality rate.

According to National Health Policy, 2002:

The figure on the health of Indian population indicates that during the period of 1981 to 2000 the life expectancy increased from 54 to 64.6; crude birth rate has come down from 33.9 to 26.1; Crude death rate has come down from 12.5 to 8.7. Malaria cases (in Millions) decreased from 2.7 to 2.2, leprosy case per 10,000 population decreased from 57.3 to 3.74.

Apart from above, legislative efforts are also praiseworthy for the better health of the people. Keeping in view the fundamental right of health, The National Health Bill, 2009 was introduced into the Parliament. According to the Section 3 of the Bill, “Government of India and the State Governments have under general obligations at all times, within the maximum limits of their available resources, towards the progressive realization of health and well being of every person in the country”.

In 2010, Assam has become the first State in the country to introduce an Assam Public Health Bill. As per Section 3 under Chapter II of the Bill, “Government in the Health

47 National Health Policy, 2002.
48 No. of 2009 (MoHFW, Gol Working Draft: Version January 09.)
and Family Welfare Department has the general obligations at all times, within the limits of their available resources, towards the progressive realization of health and well-being of every person in the State.\(^{49}\)

Article 47 thus, achieving its object i.e. progress of public health. because health is one of the outcome of balanced society. Above discussed achievements are impressive but are not enough as a large section of Indian population is still not benefitted by these well being measures. Under this situation, it is imperative that one is made aware of not only health hazards but also measures that exist for the protection of health, because economic development and healthy environment cannot be achieved without healthy life.\(^{50}\)

### 3.2.3.1.2. Article 48-A

Article 48-A, directs State to “protect, safeguard forests and wildlife”. The Parliament in its wisdom and taking note of Stockholm conference, which is considered to be global grand-norm of environment and growing awareness of the environment crises amended it to add direct provision of the protection of environment. The 42\(^{nd}\) amendment has included “Article 48-A in Directive Principles of State Policy” having direct bearing on environment. Under this Article, the State may not only adopt the protection policy but also may provide measures for the improvement of polluted environment. The State may impose instructions on the use of the factors adversely affecting the environment, and it may adopt means to safeguard forests and wildlife. Safeguard of forests is an important factor because the forests maintain balance between oxygen and carbon dioxide in the atmosphere, which constitutes an important safeguard against environment degradation, which is important to maintain balance and hence sustainable development. The Constitution (42\(^{nd}\) Amendment) Act 1976 was turning point and gave the “Centre Government also the power to legislate on forests by entry 17-A in List-III”.

The aforesaid provisions related to environmental protection as they are in Part-IV. “These are not enforceable by courts. But the principles therein laid down are

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\(^{49}\) www.indiaenvironmentportal.org/public-health/.../The_Assam_...Bill_2010.pdf, lat assessed 22-5-2014.

nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in the making laws.\footnote{Minerva Mills Ltd. v. Union of India, AIR 1980 SC 1789. (Apex Court held that, the courts are vested with the powers of judicial review and they can examine the constitutional validity of a law made by the Parliament as well as by State Legislature. A law, which is declared unconstitutional by the Court, becomes void and imperative).}

### 3.2.4. Fundamental Duties\footnote{The inclusion of Fundamental Duties in our Constitution brings it in line with "Article 29(1) of Universal Declaration of Human Rights" which says: "Everyone has the duties to the community in which alone the free and full development of the personality is possible".} and Concept of Sustainable Development

As Hohfeld said, "every right has a corresponding duty which means for every violation of right to environment which is also a part of right to life under Article 21, corresponding duty has been breached". The 42nd Amendment Act inserted Part-IV-A of the Constitution of India. According to National Commission to Review the Working of the Constitution, "Fundamental Duties of citizens serve a useful purpose. In particular, no democratic polity can ever succeed if the citizens are not willing to be active participants in the process of governance by assuming responsibilities and discharging citizenship duties and coming forward to give their best to the country". Further, it is recommended that "the leading duty of the government is to sensitize the masses and to create ecological alertness among citizens regarding the fundamental duties".

#### 3.2.4.1. Duty to Protect Natural Environment: Article 51 A(g)

In 1976, "Part IV-A was added in the Constitution under the heading of Fundamental Duties". Ten duties were included in this Part. Fundamental duties are social obligations. According to Article 51-A (g), it is duty of every citizen "to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures". This social obligation has relevance with the World Charter for Nature, 1982. Article 23 of the Charter insists that, "the right of the individual and non-governmental entities by providing that all persons shall have access to means of redress when their environment has suffered damage or degradation\footnote{Article 23, World Charter for Nature, Doc.A/Res/37/7, November, 1982.}.\footnote{Vol. 1, Ed. 2002, p.77.}"

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51 Minerva Mills Ltd. v. Union of India, AIR 1980 SC 1789. (Apex Court held that, the courts are vested with the powers of judicial review and they can examine the constitutional validity of a law made by the Parliament as well as by State Legislature. A law, which is declared unconstitutional by the Court, becomes void and imperative).

52 The inclusion of Fundamental Duties in our Constitution brings it in line with “Article 29(1) of Universal Declaration of Human Rights” which says: “Everyone has the duties to the community in which alone the free and full development of the personality is possible”.


Moreover, in M.C. Mehta\textsuperscript{55} case, the Apex Court has held that:

“Under Article 51-A (g), it is the duty of the Central Government to introduce compulsory teaching of lessons at least one in a week on the protection and improvement of natural environment in all educational institutions of the country. It directed the Central Government to get textbooks written on the subject and distribute them to educational institutions free of cost. In order to create awareness amongst the people, the consciousness of cleanliness of environment, the desirability of organizing ‘keep the city clean week’, ‘keep town clean’, ‘keep village clean week’ like factors throughout India at least once a year was suggested’.

There is no doubt, Article 51-A (g) contains a social obligation regarding nature. At the same time, it imposes constitutional obligation on the polluter to pay the cost of pollution for

i. compensating the victims of pollution \textit{and}

ii. adoption of the ecological remediation measures.

Thus, Article 51–A (g) gives effect to the well known fundamental principle of international environmental jurisprudence, namely \textit{polluter pays principle} by requiring the polluter to bear the costs of pollution. Apart from Article 51(A) (g), Department of Environment and Forests also plays a very important role for the improvement of forests, lakes and human health. Time to time, it has initiated numerous steps and policies for the conservation of the natural treasures like lakes, rivers, biodiversity, forests, wildlife and ensuring the welfare of animals and the prevention and abatement of pollution. While implementing these policies and programmes, the ministry is guided by the principles of sustainable development and enhancement of human well-being.\textsuperscript{56}

3.2.5. Other Constitutional Provisions for Environment Protection and Sustainable Development

3.2.5.1. Article 253

Article 253 of the Constitution empowers Parliament to make any law for implementing any treaty, agreement or convention with other country or countries or even any


\textsuperscript{56} For detail, See: http://moef.nic.in, last assessed 21-05-2014.
decision made at any international conference, association or other body. This power is limited to implementation of decision and that too for a limited period\textsuperscript{57}. Article 253 read with Entry 13 apparently gives Parliament the power to enact laws on virtually in regard to any entry contained in the State list. Parliament has used its powers under Article 253 read with Entry 13 of the Union List to enact The Water (Prevention and Control of Pollution) Act 1974, the Air (Prevention and Control of Pollution) Act of 1981 and Environment (Protection) Act of 1986. Preamble of the these statutes states that Acts were passed to implement the decisions reached at the United Nations Conference on Human Environment held at Stockholm in 1972.

\textit{According to Tiwari Committee Report 1980 (chaired by Shri N.D. Tiwari) ‘the broad language of Article 253 suggests that in the wake of Stockholm conference in 1972, Parliament has the power to legislate on all matters linked to the preservation of natural resources’}. Therefore, Parliament of India enacted the ‘Air Act, 1981 under Article 253’.

Moreover, Town planning, building regulations and local zoning are state subjects\textsuperscript{58}. Consequently, provisions for development along the coast and foreshore are found in several municipal statutes and the land codes of the coastal states. These local laws, however, proved inadequate to protect the coastal ecology, prompting the central government to impose stringent national coastal development norms in 1991. The norms severely restrict the nature of development in a 500m wide strip along the entire Indian coast, adding up to more than 3000 sq.km. of land. Understandably, several state governments are irate at the sweeping assumption of power by the centre\textsuperscript{59}, particularly since the coastal norms are delegated legislation issued by the executive under the Environment (Protection) Rules of 1986 which, in turn, were framed under the Environment (Protection) Act of 1986 (EPA).

\textsuperscript{57} According to the \textit{Entry 13 of List-I}: “Participation in international conferences, associations and other bodies and implementing of decisions made in the treaties”.

\textsuperscript{58} These topics fall under the heads ‘Land and Local Government’ which are the items 18 and 5 of \textit{List II}.

\textsuperscript{59} \textit{Coastal Zone Rules be Amended Soon, Economic Times}, New Delhi, 13 November, 1996.
3.2.5.2. Seventh Schedule of the Constitution

Seventh Schedule confers plenary powers upon the Centre to make agreements with other nations and can frame needed laws to effectuate same. Keeping in view the implementation of the international agreements, “the power of Parliament is further reinforced by Article 253 which confers an over-riding power on legislature to frame any statute for the whole nation or for any part of the country”. Prof. M.P. Jain in his book ‘Indian Constitutional Law’ has rightly insists that “if the Centre Government enters into any international obligation, Parliament is fully authorized to enact legislation to implement it even if the subject-matter falls within State List. Moreover, Constitution of India consciously or unconsciously deals exhaustively with legislative powers pertaining to environmental law. Further, the 42nd Amendment Act, for the first time, introduced a new entry 20-A in List III. This deals with the population control and family planning. In fact, high population growth is mainly responsible for environmental pollution. The State legislature has been given powers to frame legislations relating to healthiness of the masses and hygiene under Entry 6 of Seventh Schedule.

With respect to matters contained in State List\textsuperscript{60} from an environmental standpoint, some environmental problems such as cleanliness and disposal of wastes are handled best at local level. Issues like wild life preservation, water contamination and air pollution are required to be handled at national level.

H. Seervai, in his book, Constitutional Law of India: A Critical Commentary, (Vol. 1, 1991) has rightly pointed out that “the Constitutional Assembly while framing Constitution did not specify as to which of the two whether Parliament or the State Legislatures should regulate environmental matters. Instead of, the distribution of environmental subjects within the three lists was influenced by the Government of India Act of 1935\textsuperscript{61} and by the conflict between those who wished to create a strong Centre and others who preferred to secure more powers for the States”.

\textsuperscript{60} Article 246 (3) of Constitution of India.

\textsuperscript{61} Government of India Act 1935 was a lengthy document, detailed and complicated having 321 sections with 10 schedules. The basic feature of the Act was the introduction of partial responsibility at the Centre, Provincial autonomy and an All India Federation.
Further, S. Rao, in the *Farming of Indian Constitution: A Select Documents*, (Vol. IV, 1968) emphasized that “understandably, there was a tussle for control over natural resources such as forests and fisheries which were important economic subjects. In July, 1949 the drafting committee of the Constituent Assembly convened a meeting of the premiers of Indian States and provinces, the representatives of Central Ministers to discuss the division of legislative powers”.

Under the Seventh Schedule, number of provisions (entries) has been inserted, which allows both Parliament and State Legislatures to enact statutes for the conservation of nature and hence on sustainable development.

3.2.5.2.1. ‘List-I’

Article 246 provides that “the Parliament has the exclusive powers to make laws for the whole or any part of India with respect to matters inserted in List-I (Union List) containing 97 subjects”. Therefore, for the preservation nature, Union Government has powers to frame any laws under entries “1, 14, 24, 25, 29, 52, 53, 54, 56 and 57”, which are discussed as below:

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<tr>
<th>Entries under the Union List</th>
<th>Explanation</th>
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<tbody>
<tr>
<td>1</td>
<td>“Atomic Energy and Mineral resources necessary for its production”.</td>
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<tr>
<td>14</td>
<td>“Centre Government can entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries”.</td>
</tr>
<tr>
<td>24</td>
<td>“Shipping and navigation into water ways”.</td>
</tr>
<tr>
<td>25</td>
<td>“Maritime shipping and navigation, including shipping and navigation on tidal waters”.</td>
</tr>
<tr>
<td>29</td>
<td>“Airways, regulation and organization of air traffic and of aero-dromes”.</td>
</tr>
<tr>
<td>52</td>
<td>“Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest”.</td>
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<tr>
<td>53</td>
<td>“Regulation and development of oil fields and mineral resources”.</td>
</tr>
<tr>
<td>54</td>
<td>“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”.</td>
</tr>
<tr>
<td>56</td>
<td>“Regulation and development of inter-state rivers and river valleys”.</td>
</tr>
<tr>
<td>57</td>
<td>“Fishing and fisheries beyond territorial waters”.</td>
</tr>
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3.2.5.2.2. ‘List II’:

Article 246 provides that “the State Legislature has the exclusive power to make laws for such State or any part thereof with respect to matters enumerated in List-II (State List) comprising 66 subjects”.

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| 6 | “Public health and sanitation; hospitals and dispensaries”.
| 10 | “Burials and burial grounds; cremation grounds”.
| 14 | “Agriculture, including agriculture education and research, protection against pests and prevention of plant diseases”.
| 15 | “Preservation, protection and improvement of stock and prevention of animal diseases”.
| 17 | “Water, that is to say, water supplies, irrigation and canals, drainage and embankment. Water storage and water power subject to the provisions of entry 56 of List I”.
| 18 | “Land, that is to say, rights in over land, land tenures including the relation of landlord and tenant and the collection of rents; transfer and attention of agricultural land, land improvement and agricultural lands; colonization”.
| 21 | “Fisheries”.

3.2.5.2.3. List III – Concurrent List

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| 17 | “Prevention of cruelty to animals”.
| 17A | “Forests”.
| 17B | “Protection of wild animals and birds”.
| 18 | “Adulteration of foodstuffs and other goods”.
| 19 | “Drugs and poisons, subject to the provisions of Entry 59 of List I with respect to opium”.
| 20 | “Economic and Social planning”.
| 20A | “Population Control and family planning”.
| 29 | “Prevention of the extension from one state to another of infections or contagious diseases or pests affecting men, animals or plants”.
| 31 | “Shipping and Navigation on inland waterways as regards mechanically propelled vessels”.
| 36 | “Factories”.
| 37 | “Boilers”.
| 40 | “Archaeological sites and remains other than those declared by or under law made by Parliament to be of national importance”.

63 Under entry 52, List I, certain agro-industries have been taken by the Centre under its control. Under entry 33, List III, Parliament has enacted the Essential Commodities Act, 1955.
64 Under Article 246, both Parliament and the State Legislatures have the power to make laws with respect to matters contained in List-III (Concurrent List) Comprising of 52 subjects.
65 Prevention of Food Adulteration Act, 1954 has been enacted by Parliament under this entry.
66 Bombay Town Planning Act, 1954 was enacted under this entry.
3.2.5.3. Eleventh Schedule of the Constitution

The Constitution 73rd Amendment Act 1992 on Panchayats adds a new Schedule, the Eleventh Schedule to the Constitution. Contents of the Schedule relating to environment protection and conservation are as “Land improvement, implementation of land reforms, land consolidation and soil conservation, minor development, water management and watershed, forestry, social forestry and farm forestry, minor forest produce, fuel and fodder, non-conventional energy resources and maintenance of community assets”.

Under 73rd Amendment Act, following functions were assigned to the Panchayats,

“Soil conservation, water management, watershed development, social and farm forestry, drinking water, fuel and fodder, non-conventional energy sources and maintenance of community assets, which are considered to be significant items from the environment management point of view”

The above discussed constitutional provisions very much clear that concept of environment protection and sustainable development is a hidden aspect of our Constitution and connected with our religious and social beliefs. Under these, a good number of legislations have been enacted and they are capable of producing good results but the most important thing is the strong will power of government and community participation to produce the desired results. In order to control environmental pollution in April 1981 the National Committee on Environmental Planning (NCEP) was established. The NCEP is doing commendable work in the areas of appraisal of development projects, human settlement planning, and formulation of environmental planning and in creating environmental awareness at various levels. Moreover, dignified life could not be achieved without affording the right of sustainable development and right to live in clean environment to citizens. Constitutional Forty-Second (Amendment) Act, 1976, inspired from the Stockholm Conference on Human Environment, in which India participated very actively and promised to the world community for implementation of sustainable development principles. Apart from that, Part-IV and Part IV-A also deal with the same concept. Above provisions makes it clear that India has fulfilled all its obligations, which India has promised in international treaties, conventions, and declarations on Environment Protection and sustainable development.