This Chapter analyses the provisions in Part III (Fundamental Rights) and Part IV (Directive Principles) of the Constitution of India from a human rights and environment perspective and discusses the interpretation given by the judiciary regarding the ‘right to environment’ within the meaning of ‘the right to life’ which is a Fundamental Right guaranteed by the Constitution of India. It also examines whether the judicial interpretation of the right to environment within the meaning of the right to life is adequate for enforcement of the right to a clean and healthy environment. An argument is made for a fundamental right to a clean and healthy environment as an independent constitutional right within Part III of the Constitution of India.

4.1 HUMAN RIGHTS UNDER THE CONSTITUTION OF INDIA

The Indian Constitution (1949) was drafted prior to the Universal Declaration of Human Rights. It was however, adopted at a time when the deliberations for the UDHR were being held. The framers of the Constitution were thus influenced by the concept of human rights. The Indian Constitution therefore already guaranteed most of the human rights which later came to be embodied in the International Covenant on Civil and Political Rights (ICCPR, 1966). India adopted the ICCPR in 1979.

The Constitution of India guarantees and secures to all its people, justice- social, economic and political; equality of status and of opportunity before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action subject to law and public morality. Human rights were included in the Constitution of India in two substantive parts. The civil and political rights were included in Part III of the Constitution as Fundamental Rights which are justiciable and the social, economic and cultural rights in Part IV relating to the Directive Principles of State Policy which are non-justiciable.
The Protection of Human Rights Act, 1993\(^{31}\) came into force on 28 September 1993. The Act *inter-alia* provides for the creation of a National Human Rights Commission (NHRC) and State Human Rights Commissions. In terms of section 2 of the Act, “human rights” means the rights relating to the life, liberty, equality and dignity of the individual, guaranteed by the Constitution or embodied in the International Covenants and enforceable by the courts in India. “International Covenants” means the International Covenant on Civil and Political Right (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) adopted by the General Assembly of the United Nations on 16\(^{th}\) December, 1966. In 2006, the provision was amended\(^{32}\) to include ‘such other Covenant or Convention adopted by the General Assembly of the United Nations as the Central Government may, by notification, specify’. According to the Statement of Objects and Reasons of the Protection of Human Rights Act, 1993, the NHRC was constituted for ‘better protection of human rights’ and ‘matters connected therewith or incidental thereto’. Thus, besides the Supreme Court which has the powers to protect human rights, the NHRC is entrusted with the responsibility of protecting human rights. The Supreme Court remitted the cases relating to bonded labour and child labour, monitoring of mental hospitals, starvation death in Odhisha and Agra Protective Home to the NHRC. The NHRC monitors these cases and submits periodic reports to the Supreme Court. So far, no environment related cases have been remitted to the NHRC.

**4.2 CONSTITUTIONAL PROVISIONS RELATING TO ENVIRONMENT**

The Constitution of India casts an obligation on the state as well as the citizens to protect and improve the environment. Justice Krishna Iyer calls it ‘a remedial weapon of versatile use’ which must be made available to citizens in their struggle to achieve social justice (Krishna Iyer, 2011). The Constitution as it stood on 26 January 1950 did not have any direct reference to environmental protection. It was more concerned with the dream of development. According to Professor Baxi, ‘If the provisions relating to environment had been incorporated in the Constitution then, India would have set a very worthwhile model of environment protection not just for herself but for the many decolonised third world nations which modeled their Constitutions on the Indian Constitution,’ (Baxi, 1990).

\(^{31}\) Act 10 of 1994  
\(^{32}\) Act 43 of 2006
After the Stockholm Declaration of 1972, with the increase in the overall environmental consciousness, amendments were made to the Constitution incorporating the environmental aspects (Divan and Rosencranz, 2001). Article 48A was inserted in Part IV of the Constitution\(^{33}\) which relates to the Directive Principles of State Policy (Forty-Second Amendment Act, 1976). It stipulates that, “the State shall endeavour to protect and improve the environment and to safeguard the forests and the wildlife of the country.” By the same Amendment Act of 1976, a new provision 51-A was added in the form of Fundamental Duties in Part IVA of the Constitution\(^{34}\). Though not legally enforceable, these fundamental duties are recognised as moral obligations that help in upholding the spirit of nationalism. The fundamental duties can be classified as duties towards the state, towards the environment and towards one’s self. Article 51-A (g) stipulates that it is the duty of every citizen “to protect and improve the natural environment including forests, lakes, rivers, and wildlife and to have compassion for living creatures”. For the purposes of taking effective and meaningful steps, under the same Amendment Act\(^{35}\) ‘forests and wildlife’ were placed in the Concurrent list\(^{36}\). The Constitution of India thus casts an obligation on the State as well as the citizens to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. The insertion of Article 48A and 51-A (g) have acted as the foundations for building up environmental jurisprudence (Leelakrishnan, 2010).

The UDHR includes a reference to fundamental duties. The provision in Article 51-A of the Constitution is in line with the Article 29(1) of the Universal Declaration of Human Rights which provides that everyone has duties to the community in which alone the free and full development of the personality is possible.

The scope of Article 51-A (g) was discussed by the Rajasthan High Court in \(LK Koolwal v State of Rajasthan\)\(^{37}\). The Rajasthan High Court was moved in this case by the petitioner under Article 226 (writ jurisdiction) highlighting that the municipality had failed to discharge its ‘primary duty,’ resulting in the acute sanitation problem in Jaipur which was hazardous to the life of the citizens of Jaipur. The Court explained the true scope of Article 51-A as follows:

\(^{33}\) The Forty Second Constitution Amendment Act, 1976.
\(^{34}\) Article 51-A
\(^{35}\) ibid
\(^{36}\) Entries 17A and 17B
\(^{37}\) AIR 1988 Raj.2
' We can call Article 51-A 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 the court to see the State performs the duties faithfully and the obligatory and primary duties are performed in accordance with the law of the land. Omissions or commissions are brought to the notice of the Court by the citizens and thus, Article 51-A gives 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 particular law of the State.'

The Court also pointed out that, ‘right and duty co-exists; there cannot be any right without any duty and there cannot be any duty without any right.’ Insanitation leads to slow poisoning and adversely affects the life of the citizens and hence it falls within the purview of Article 21 (right to life) of the Constitution of India. Therefore, every citizen is duty bound to see that rights which he has acquired under the Constitution as a citizen are fulfilled.

The Supreme Court in *Subhash Kumar v State of Bihar* called upon the citizens to fulfill their social obligations as a fundamental duty enshrined in the Constitution:

“Preservation of the environment and keeping the ecological balance unaffected is a task which not only Governments but also every citizen must undertake. It is a social obligation and let us remind every Indian citizen that it is his fundamental duty as enshrined in Art 51-A (g) of the Constitution.”

Thus, the Supreme Court while clearly pointing out the failure on part of the executive bodies to perform the statutory duty in controlling pollution also made it clear that the citizens have a fundamental duty to preserve the environment and the ecological balance. A clear indication that while citizens have rights they have obligations towards protecting the environment.

### 4.3 THE STATUS OF THE DIRECTIVE PRINCIPLES RELATING TO ENVIRONMENT

The Constitutional provisions are the bedrock of legislative measures for protecting the environment. Although not justiciable in a Court of law, the Directive Principles form the fundamental feature and the conscience of the Constitution. The Directive Principles are fundamental in the governance of the country and the Constitution specifies that it shall be the duty of the State to apply these principles in making laws. The problem faced by the judiciary is whether to give precedence to fundamental

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39 Article 37
rights or Directive Principles (Razzaque, 2004). The non-enforceable nature of the Directive Principles does not prevent the judiciary from declaring any law that violates the Directive Principles as unconstitutional. The Courts have often relied on the construction and interpretation based on the Directive Principles when pronouncing judgments. In the interpretation of the fundamental right relating to ‘right to life’ the judiciary adopted an innovative approach in combining the spirit of both fundamental rights as well as the Directive Principles. There is no conflict between the two and they are complementary and supplementary to each other. The Apex Court held that the fundamental rights should be interpreted in the light of the directive principles and the latter should be read into the former.

In the case of *Shri Sachidanand Pandey v State of West Bengal* the Supreme Court pointed out that whenever a problem of ecology is brought before the court, the court is bound to bear in mind Articles 48-A and 51-A (g) of the Constitution. In certain cases the Court can take affirmative action commanding the other organs of the State namely, the executive and the legislature to comply with the statutory obligation of protecting and improving the environment. In *T. Damodar Rao v SO Municipal Corporation, Hyderabad*, the Court pointed out that in view of Articles 48-A and 51A (g), the protection of the environment is not only the duty of every citizen but it is also the ‘obligation’ of the State and all other State organs including the Courts.

The Directive Principles represent the socio-economic goals, which the nation is expected to realize progressively. It obligates the three wings of the Constitution, namely, the executive, the legislature and the judiciary to implement these principles. With the inclusion of environment protection under the Directive Principles in the Constitution, specific responsibilities are assigned to the State and the citizens.

### 4.4 INTERPRETATION OF ARTICLE 21 AS INCLUSIVE OF A RIGHT TO ENVIRONMENT

Article 21 of the Constitution of India states that –

‘No person shall be deprived of his life or personal liberty except according to procedure established by law’.

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40 Minerva Mills v Union of India AIR 1980 SC1789
41 ABSK Sangh (Rly) v Union of India AIR(68) 1981 SC 298, p335
42 AIR 1987 SC 1109
43 AIR 1987 AP 171
Taking the human rights angle, in Bandhua Mukti Morcha v. Union of India and others, in respect of bonded labour and weaker sections of the society, the Supreme Court stated that Article 21 assures the right to live with human dignity and free from exploitation. The state is under a constitutional obligation to see that there is no violation of the fundamental right of any person, particularly when the person being exploited belongs to the weaker section of the community and is unable to wage a legal battle against an opponent who is strong and powerful. Both, the Central Government and the State Government are therefore bound to ensure observance of the various social welfare and labour laws enacted by Parliament for the purpose of securing to the workmen a life of basic human dignity in compliance with the Directive Principles of state policy. The expanded scope of Article 21 was explained by the Supreme Court in the case of Unni Krishnan v. State of A.P. by observing that life includes education as well and the right to education flows from the right to life.

The major contribution of the Supreme Court to human rights jurisprudence has been two fold. Firstly, it is the substantive expansion of the concept of human rights under Article 21 of the Constitution and secondly, the procedural innovation of PIL. It goes to the credit of the Supreme Court of India that by its landmark judgment in Rural Litigation and Entitlement Kendra vs State of UP, M C Mehta vs. Union of India and several other pronouncements it has expanded the interpretation of right to life in Article 21, guaranteeing the right to life, an expanded meaning to include the right to safe and pollution free environment within its ambit. In the case of Subhash Kumar v State of Bihar the Apex Court gave directions that the ‘right to life’ referred to in Article 21 of the Constitution of India includes the ‘right to pollution free air and water’. In A P Pollution Control Board (II) v Prof M V Nayudu, the Supreme Court observed that the right to have access to drinking water is fundamental to life and it is the duty of the State under Art 21 to provide clean drinking water to its citizens. In Narmada Bachao Andolan v Union of India the Court stated that water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Art 21 of the Constitution of

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44 Bandhua Mukti Morcha v. Union of India and others, 1992 AIR 38; 1991 SCR (3) 524
46 AIR 1986 2 SCC 431
48 (1991) S C 420 PIL
49 (2001) 2 SCC 62
50 (2000) 10 SCC 664,
India. Similarly, in the matter of vehicular pollution in Delhi, *MC Mehta v Union of India* \(^{51}\), the Court said that clean air is a part of ‘right to life’ and directed the Delhi Government, to convert the buses in Delhi to Compressed Natural Gas (CNG) to protect the people from air pollution. In *Noise Pollution v In Re*\(^{52}\) the court ruled that freedom from noise pollution was part of ‘right to life’ guaranteed by Article 21.

The Apex Court adopted a progressive approach by relaxing the rule of ‘standing’ before the court and permitting ordinary citizens to petition the court. As a result of the expansion of the scope of Article 21 relating to the right to life, Public Interest Litigations (PILs) in respect of many human rights issues\(^{53}\) were brought before the Court. Class actions have been entertained by the Supreme Court under Article 32 of the Constitution as being part of public interest litigation actions. The High Courts, also within their jurisdiction under Article 226, have intervened and passed writs, orders and directions in appropriate cases, thereby giving birth to an incomparable environmental jurisprudence in the form of a fundamental right to a clean and healthy environment. Through its judgements the Supreme Court has responded positively to the aspirations of the people and intervened to uphold the Constitution and democratic principles enshrined in the Constitution. The judiciary has innovatively and creatively interpreted the existing provisions in the legal system to develop the law in the context of environment protection.

The Supreme Court has been criticised by some scholars for excessive judicial activism by interfering too much and usurping the powers vested in the elected representatives (Lal, 2004). However, others are of the view that judicial activism was necessitated by executive inaction in implementing and enforcing environmental laws as mandated (Chandrachud, 2011). The Court therefore took upon itself to enforce laws made by the legislature and fill gaps in the legislation consistent with the spirit and objective of the law. In *Hussainara Khatoon and others v Home Secretary, State of Bihar*, Justice Bhagwati observed that powers of the Supreme Court in protecting the Constitutional rights are very broad. Therefore there is no reason why the Supreme Court should not adopt an activist approach and issue directions to the State to take positive action. The main factors that have contributed to judicial activism and brought it to the forefront are: the violation of fundamental

\(^{51}\) 1998 (6) SCC 60 and 1998 (9) SCC 589

\(^{52}\) (2005) 5 SCC 733

\(^{53}\) E.g. Health hazards due to pollution, housing for beggars, immediate medical aid to injured persons, deaths due to starvation, the right to information, the right to open trial, inhuman conditions in aftercare homes.
rights; discrimination against the marginalised sections of society; poor implementation of laws especially in matters of social policy; public resource management and environment protection, all of which lie within the domain of Parliament and the Executive (Divan and Rosencranz, 2001).

The most significant development in matters relating to environment has been the expanded interpretation given by the Supreme Court of India for including a ‘right to a clean and healthy environment’ within the ambit of ‘right to life’. Therefore, even though the right to a safe and clean environment does not form an explicit part of the Fundamental Rights enshrined in Part III of the Constitution it has the force of a Fundamental Right in view of the status accorded to it by the highest Constitutional interpretative authority of laws in the country.

While the right to environment has been recognised within the national legal system as per the decision of the Supreme Court, and can be enforced under the powers of the Constitution, it places the responsibility on the government to adopt appropriate policies towards fulfilment of the claims arising from the established right. The government has to protect, promote and fulfil the right by enacting appropriate legislation and taking other supportive measures so as to make the public aware of their rights. The terminology to describe the quality of the environment has not been precisely defined nor is there a consistency in the usage of a ‘particular quality’ by the Court while referring to a given medium. Different adjectives such as ‘clean’, ‘healthy,’ ‘safe’ and ‘wholesome’ have been used to describe the quality of air, water or the general environment. The right has to be articulated in a clear and comprehensive manner.

Human life depends on clean air, safe drinking water and a healthy environment. A right to an environment of quality is a precondition to living a life with dignity. Since the Supreme Court has already recognised the right to environment as inherent in the right to life which is a fundamental right, there is adequate justification to articulate the right to a clean and healthy environment as a basic and independent fundamental right within Part III of the Constitution of India.

Several countries have incorporated environmental rights in their constitutions. A research study conducted in respect of 92 countries in which the right to environment enjoys a constitutional status has demonstrated that the incorporation
of the right to a healthy environment in a country's constitution leads directly to two important legal outcomes—stronger environmental laws and court decisions defending the right from violations (Boyd, 2012).

As the Constitution is the highest and the strongest law of the country, the Constitutional recognition of the right to a clean and healthy environment has many advantages. It will require the State to enact appropriate policies, laws and regulations consistent with it. It will provide an impetus for enactment of stronger environmental laws, better implementation, enhanced resource allocation, greater public participation in environmental decision-making, increased accountability and no trade-offs with other social and economic rights. Laws that are inconsistent with the Constitutional provision are liable to be struck down. A constitutional protection of the right will provide a level playing field with other social and economic rights and ensure a better balancing of competing interests.

4.5 INCLUSION OF THE ‘RIGHT TO ENVIRONMENT’ IN THE NGT STATUTE.

The Green Bench of the Supreme Court has been hailed as one of the best examples of response to environmental challenges (Werksman, 2009). Though the Supreme Court evolved the system of PIL as an innovative way of giving a standing to ordinary people in the country and entertained a large number of environment related cases, it expressed the view that there was lack of expertise within the Courts to judge the merits of an environmental issue. Environmental law has grown as a specialised area of law. The Supreme Court, as early as 1986 and again in 1996 and 2001, in three landmark judgements expressed the difficulties which the judges faced due to lack of expertise in dealing with technical/scientific issues relating to environment54. The Law Commission in its 186th report recommended the constitution of environment courts (Law Commission Report, 2003).

The importance of Environment Courts or Tribunals in the last decade has grown due to the demand for greater justice and the growing complexity of environmental laws and science. Over 350 specialised environmental courts or tribunals have been established in 41 countries (Pring and Pring, 2009). They differ from regular courts

54 MC Mehta V Union of India, 1986 2 SCC 176, 201-202
Indian Council for Enviro -Legal Action vs. Union of India (CRZ Notification) 1996(3) SCC 212, 252,
AP Pollution Control Board v Prof M V Nayadu (2001) 2 SCC62, 84-85
in form, jurisdiction and functions. Lord Woolf articulated the need to set up environment courts on the grounds of practicality as the general courts were unable to deal with the increasing specialisation of environmental law. Amongst the reasons given by him for the development of Environment Courts was the fact that the high courts were already overburdened and unable to deal with an influx of complex environmental issues, problems of multiplicity of proceedings and the criminal courts in addition to their own cases were having to deal with quasi-criminal offences giving rise to technical crimes which did not fit into the structure of criminal trials (Woolf, 2009).

The Government, acting on the basis of the judicial pronouncements relating to a right to environment, established a National Environment Tribunal by passing a law in 1995 and a National Environment Appellate Authority in 1997. Both these institutions had limited jurisdiction and were non functional since their formation. The statutes constituting them were subsequently repealed and as a more logical response to both legal and technical expertise in environmental law and to overcome the inadequacy of general courts to deal with environmental issues, a special institution aimed at providing faster, cheaper and more effective resolution of environmental disputes was set up in 2010 in the form of the National Green Tribunal.

The establishment of the National Green Tribunal was to provide an effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and to give relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. The legislation aims to ensure the fundamental right to speedy justice.

The jurisdiction of the Tribunal is to decide on environmental matters, considering the "involvement of multi-disciplinary issues." The Act provides that besides the questions which arise out of the implementation of the specified enactments, the enactments specified in the Schedule I are:

1. The Water (Prevention & Control of Pollution) Act, 1974
3. The Forest (Conservation) Act, 1980
4. The Air (Prevention & Control of Pollution) Act, 1981
7. The Biological Diversity Act, 2002
Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved.\textsuperscript{56} The Tribunal has the power to provide relief and compensation to the victims of pollution, for environmental damage, for restitution of property damaged and for restitution of the environment\textsuperscript{57}. It has a unique feature, distinct from courts in having technical members on the judicial benches.

Section 22 provides that an appeal against the decision of the Tribunal would lie to the Supreme Court of India. The jurisdiction of civil courts is specifically excluded in matters falling within the domain of the Tribunal. The Tribunal has the same powers as are vested in a civil court under the Code of Civil Procedure, 1908. The Tribunal shall not be bound by the procedure laid down under the Code of Civil Procedure, 1908, but shall be guided by principles of natural justice.

The Tribunal is mandated to make an endeavor for disposal of applications or appeals within 6 months of filing of the same initially and follow circuit procedure for making itself more accessible. The five places of its sitting are at Delhi, Bhopal, Pune, Kolkata and Chennai. Though the first hearing of the Tribunal was held on 25 May 2011 it became fully operational with effect from 4 July 2011\textsuperscript{58}.

The NGT is empowered to enforce any legal right relating to environment and is enjoined to follow internationally recognised environmental principles such as sustainable development, precautionary principle and polluter pay principle while issuing an order, decision or award\textsuperscript{59}. As held by the Supreme Court these principles already form part of the environmental law of the country. More importantly, the NGT Act recognises in its preamble, the commitment made by India at the international conferences (Stockholm, 1972 and Rio, 1992) and incorporates the judicial pronouncement of the ‘right to a healthy environment’ as part of the ‘right to life’ given in Article 21 of the Constitution of India. This is an important legal development as the ‘right to a healthy environment’ forms part of a statute. Though it has been included in the preamble and not the operative part of the statute, it is relevant for interpretation whenever there is an ambiguity or difficulty in

\textsuperscript{56} Section 14
\textsuperscript{57} Section 15 of NGT Act, 2010.
\textsuperscript{58} <http://www.wwfindia.org/about_enablers/cel/national_green_tribunal>
\textsuperscript{59} Section 20 of NGT Act, 2010
ascertaining the intention of the statute. As an introductory statement it sets out the guiding purpose and principles of the statute (Ijaiya, 2009).

The diverse but complementary role of the NGT, the judiciary and the NHRC in protecting environment from a human rights perspective is discussed in Chapter 9.