CHAPTER - 5

CONCEPT OF ECOLOGY AND ENVIRONMENT PROTECTION IN INDIA : FROM PRE-HISTORIC AGE TO CONSTITUTIONAL ERA
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The proceeding chapter has demonstrated how the legal control of environmental pollution in India has got its support from the principle of common law. Actually Environmental jurisprudence in India has been gradually developed taking the spirit from various legal sanctions for environment protection under international regime and also from the principles of environment protection under common law regime. But those are not the only sources from which India got its resources in developing principle of law in controlling environmental pollution. Since the time immemorial, Indians have been believing in environment protection and such tradition is also well supported by Indian mythological and spiritual believes which have been ultimately considered as the basis of Environmental Jurisprudence in India and on the basis of such spiritual and religious thoughts and beliefs and historical traditions, constitutional mandates have come into existence in India for the protection of environment and its natural resources. Therefore, it is essential to discuss in detail the concept of ecology and environment protection under Indian perspective which contains not only the principle of environment protection under historical and religious perspective, but also the constitutional mandates, meant for environment protection, along with its judicial perception which has played a significant role in establishing such concept of ecology and environment protection as a part and parcel of the
environmental jurisprudence in India.

5.1 Environmental Protection under Historical and Religious Perspective in India and its Judicial Perception

5.1.1 Environmental Ethics in Ancient India

5.1.1.a Pre-Historical Indus Civilization period

There had been age old tradition of endeavour for the protection and preservation of Environment and its natural resources in India, and this tradition has not only began with the introduction of modern age but right from the historic age in India. It may be further mentioned here that even in prehistoric age, which may be also called as proto-historic age, during the period of Indus Civilisation (fourth Millennium B.C.)¹, people were also well aware of the concept of ecology and environmental protection.

According to the ancient Indian mythology, the God prevails the whole universe and this ancient Indian mythology has helped Indian to maintain 'a constant link with nature'.² The concept of divine origine is based on the principle that God has created this Universe and control it with the help of divine forces. According to this concept, power of God resides in different worlds in the form of different entities and governed the universe in accordance with the 'principle of Lila or God's play'³. According to this view, in ancient days, the attitude towards all the objects of the universe recognised the presence of divine forces in the Panchubhuta (The five elements), viz. air, water, fire, earth and space. Ancestors of the present

¹. Chowdhury, Kiran Chandra (Dr.); Bharater Itihas Katha (History of India); Oriental Book Company Pvt. Ltd., Kolkata; revised 1st Edition, 1994; Page 27.
². Strong, Hanne; "Ecological and Spiritual Revolution"; in Our Planet, 1995; VII-3; Page 23.
generations used to regard the divine existence in trees, medicines, rivers, lakes, mountains and all the living beings.

So India may be considered as one of the pioneer countries of the world for its extra-ordinary awareness regarding the nature and environment during ancient age and there is no doubt that protection of environment and mainenance of the ecological balance are considered as a part of Indian tradition and cultural values. People of ancient India with the aforesaid high value of life, always considered protection and preservation of environment as a most important and obligatory part of their life and that consideration was always reflected from various activities of their daily lives. Now the activities of Ancient Indian People and their methodology in different phase of Ancient India regarding environment protection are being discussed hereunder.

During pre-historical Indus Civilization period in Indus Valley region, where Harappa and Mohenzodaro were situated, development of life of Ancient Indian people of that period had reached into such level which could easily be compared with modern age. So far as country and town planning is concerned, it was really astonishing. Sense of Public Health and Hygiene of the people was very high. Architects and country planners were well aware about the danger of mixing of drinking water and sewage, if proper care and attention would not have been taken and that is why they always gave proper attention in both supply of drinking water and maintenance of sewerage system, so that contamination of drinking water with sewerage water could not be taken place. There was very good under ground sewerage system in Harappa and Mohenzadaro. At that time special care and attention were taken regularly for sewerage treatment in
those two towns and for that treatment purpose 'soakpits' were constructed there in different places within the sewerage system. There was not a single open drain and all were covered with very good cover made up of either stone or concrete.

There was very good system for cleaning the sewerage and water supply pipe and those were regularly cleaned. There was also a special arrangement for dumping of all the gurbages and wastes of the town in outside of the two towns, Horappa and Mohenzodaro in deep ditch. It was an excellent example of maintenance of public health and hygiene. There were also special arrangements for discharging of solid municipal waste products and polluted water and the entire system was conducted with high care and caution to avoid any kind of risk of pollution in drinking water due to contamination by polluted sewerage water. So these are the finest example of effective measures taken by Ancient Indian people for the protection of human environment.

In Indus valley region during Indus civilization period, burial system was also very much scientific and aiming at prevention of the environmental pollution. According to Prof. Smith, here bodies were interred in deep graves lay extended north and south on stone slabs and such tombs were surrounded by stone circles. In the opinion of Smith the Indian megalithic tombs, of which hundreds have been noted in the peninsula, usually contain iron objects and may be assigned to the early Iron Age. According to Smith, many prehistoric cremeteries had been existing in the Tinnevelly

4. Chowdhury, Kiran Chandra (Dr.); Bharater Itihas Katha (History of India); Oriental Book Company Pvt. Ltd., Kolkata; revised 1st Edition, 1994; Page 29; Antonova, Koka & Gregory Bonegardh Levin & Gregory Kotovoski; Bharat Varser Itihash (History of India); Pragati Prakashan, Mosko; 2nd Edition, 1986; page 25.
6. Ibid.
District, situated in Northern Ancient India, along the course of the Tamraparni river, the most ancient seat of the pearl and chank or conch-shell fishery, where historians and archeologists found the largest one covering area of 114 acres\textsuperscript{7}. So there is no doubt that this type of arrangements were made only to protect the human environment and hygiene in prehistoric Ancient India.

\textbf{5.1.1.b Vedic Period}

Since Vedic time, the main philosophy of Indian social life was 'to live in harmony with nature'. Sages, saints and Rishis of ancient India living in forests used to follow the teaching and preaching of different forms of Vedas, Upanishads, Smritis and Dharmas. These literatures of olden times preached the common people to worship to the plants, trees, mother earth, sky (aakash), air (vayu), water (jal), and animals and to show a benevolent attitude towards them. It was regarded as a sacred duty of every person to protect those elements of nature.

In the various vedic literature, including purans, upanishad and other ancient mythological literature, trees and plants were considered as the abode of various gods and goddesses. Therefore, cutting of trees and destruction of flora were considered as sinful acts as per different vedic literature and it was aimed at preservation of environment and its elements from its destruction. In 'Rigveda'\textsuperscript{7A}, one entire hymn has been devoted to the praise of healing properties of trees. In 'Matsya Puran', one tree has been regarded equal to ten sons. According to 'Varaha Purana', "who plants one pipal, one neem, one 'bat', ten flowering plants or creepers, two pomegranates, two oranges and five mango trees will not go to hell."\textsuperscript{8}

In this regard, Manusmriti, the first systematic codified legal principles on

\textsuperscript{7} Ibid.

\textsuperscript{7A} Rigveda, VII, 42.2

\textsuperscript{8} Varaha Purana, 172.38; Shastri S.C.; Environmental Law; Eastern Book Company; Lucknow; 1st Edition; 2002; page 5.
Hindu Law, has prescribed various punishments for destroying trees and plants considering it as an offence.

'Charak Samhita' also does not allow the destruction of forests considering it as the most dangerous act for humanity and its welfare. According to 'Charak Samhita' the destruction of forests is most dangerous for the nation and for human beings. Charak Samhita has also specified air pollution as a cause of various diseases in the following manner - "The polluted air is mixed with bad elements. The air which is devoid of the virtues of season, full of moisture, gusty, hard, icy-cool, hot, dry, harmful, roaring, colliding from two or three sides, foul smelling, oily, full of dirt, smoke, sand and steam, creates diseases in the body and is polluted". Similarly, the charak Samhita by prohibiting the use of unwholesome of water speaks for its effort to prevent water pollution.

In the 'Yajurveda', killing of animals has been prohibited. It was observed there that no person should kill animals. According to Yajurveda, one should be helpful to all animals and by serving them one would obtain heaven.

Therefore Indian Social and moral ethics relating to environment protection and conservation have its age old tradition. Even in prehistoric period and in vedic age, concept of environment protection was very much in existence, as it is understood from the forgoing discussion under this chapter.

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8A. For details see Charak Samhita, Sutrasathanam XXVII 213, 215; also see Charak Samhita, Vimanusthana III 6(1).
9B. Yajurveda XIII 47, 49.
5.1.1.c Post-Vedic Period

By the end of the prehistoric and vedic period, mainly during post-vedic historical period, when kingship came into existence, concept of environment protection and conservation of nature had not been left aside, rather it was appeared in more reasonable and more methodical way, based on certain norms and policies, sanctioned by the rule of Law.

In Kautilya's Arthashastra, which was written in between 321 and 300 B.C. during the regime of Chandra Gupta Maurya and considered as authentic document of Ancient India, regarding political theory, a detailed account of the policies for preservation of environment is available. In the Kautilya's Arthasastra, emphasis was given to preserve natural environment and its various elements, specially wild life and plantation.

It was proposed in the 'Arthasastra' to appoint the 'superintendent of forest produce' who would look after the entire affairs regarding forest and forest produce. According to Arthasastra, not only he should conduct productive works in forests, he would also fix adequate fines and compensation and fines and compensations would be fixed for causing any damage to the productive forests, except caused in natural calamities and it would be levied from the person who would be responsible for it. As per Arthasastra, for cutting the tender sprouts of trees in city parks bearing fruits and flowers and providing shade, the fine should be 'six panas' and for cutting small branches and stout branches, it should be twelve pannas and twenty four pannas respectively.

In the Arthasastra, punishment with the highest degree was recommended against entrapping, killing or molesting deer, bison, birds and fish and the other forest's living animals which had been under State protection. It has been also mentioned there that for entrapping, killing or injuring fish and birds, who usually do not prey other animals and whose killing had been forbidden, a fine of 'twenty six and three quarters pannas'\(^2\) should be imposed and in case of entrapping deer and other beasts, such fine would be double. It was also proposed there to appoint the 'superintendent of slaughter house'\(^3\) who had been empowered to look after all those matters, including to impose fine on those persons who used to violate the prohibitory order in connection with the trapping and killing of the wild animals. It was also recommended in the Arthasastra that cattle, such as a calf, a bull or a milch cow, should not be slaughtered and if any body would slaughter or torture them to death he should be fined with 50 pannas.\(^4\)

So these are the clear example of awareness of environmental protection and preservation of natural resources including different life stocks and plantations in Ancient India, as it has been understood from the various scriptures of Arthasastra, as mentioned above.

In addition to this Kautilya's Arthasastra, different rulers of Ancient India had also taken initiatives to protect and preserve the natural environment including its resources and imposed various sanctions. It may be mentioned here that those sanctions, supported by King's

\(^{12}\) Shamasastry R. (Dr.); Kautilya's Arthasastra; Mysore Printing and Publishing House, Mysore; 7th Edidition, 1961; page 135.

\(^{13}\) Ibid

\(^{14}\) Ibid at page 136.
prerogative, are not less priceworthy than any sanction of Law of modern age aiming at environment protection.

In this regard, the name of one of the Ancient Indian emperors, like Ashoka the Great (273-236 B.C), who became king of Mauyra dynasty when the regime of Bindusara terminated in 273 B.C.\textsuperscript{15}, can not be ignored. He had promoted the planting and preservation of flora and fauna. He had recommended and sanctioned various punishments for the killing of animals, including ants, squirrels, rats, birds and also for the felling of trees.

In this way in Ancient India, efforts for the protection and preservation of natural environment had ultimately achieved a significant place in its historical perspective.

5.1.2. Environmental Ethics in Religious Perspective in India.

5.1.2.a General Overview

India is the place of different religious and spiritual thoughts and believes. Right from Hinduism, different religious beliefs like, Buddhism, Jainism, Sikhism, including Islamic faith and belief have been emerged in India in different time and in different period to enlight the people spiritually. Though their approach of religious practice and thinking are different from each other, but in the matter of respect to the God and its creation, there is no variance among those different religious faiths and believes. In all most all the religious believes, nature is considered as the greatest ever creation of the God and people should always

\textsuperscript{15}. Smith. A. Vincent; The Oxford History of India; Oxford, London; Reprinted 2nd Edition, 1941; Page 93.
respect and honour to it. Not a single religious practice encourage the
destruction of nature, rather all of them speak for the environmental
harmony and preservation of natural resources.

Not a single religious thought and belief can justify the destructive
tagitude of mankind towards the environment and its various elements.
On the contrary, each and every religion believes that the main object
of social life of human society is to maintain harmony with the nature.
Those religious thoughts & beliefs also justify the protection and
preservation of the basic elements of nature, such as earth, air, water,
energy and space considering as a gift of God.

Now in this context, it is very much necessary to examine the
different religious thoughts and beliefs in connection with environment
protection and in the following discussion it will be carried on.

5.1.2.b Enviroment Protection under Hindu Mythology

Hinduism is one of the oldest religious thoughts of the world. This
religious thought always endeavour to respect the nature and to maintain
environmental harmony and conservation of nature. Since Vedic time,
the main motto of the social life was to live in harmony with nature.
Sages, Saints and great philosophers of Ancient India used to live
in forest and on mountain where they meditated and ultimately they
expressed their perceptions through Vedas, Upanishads, Smrities and
Dharmas. These literatures of olden times always preached the people
to Worship the nature and its different constituent elements, like plant,
tree, mother earth, sky, air water and animals and to keep a benevolent
attitude towards them as a sacred duty of every person of those days.
Hinduism always expresses its firm belief in existence of God in all elements of natural environment where man lives. It has been also expressed in the earliest religious thought in India, the Rig Veda. It has considered the five constituents elements of our universe, i.e. earth, air, water, energy and space, as the basis of all forms of human activities through its various religious scripture and mythological literature like Ramayan, Mahabharat and Gita. As per Hindu religious belief, space (Akas) was first created by 'Brahma' and that Akas (Bomb) created air (Vayu) in the form of Tej or energy. The other elements, earth (Kshiti) and water (Apa) and 'Marut' had also been created by the God. It is the firm religious belief of the Hindus that God exists in all those creation of Brahmha, the supreme God, like Kshiti, Apa, Tej, Marut and Akas (Bomb) and as such these elements will be honoured and protected so that no harm would be caused to them.

'Atharva Veda' is one of the ancient religious scripture wherein the concept of respect for earth has been pronounced. Rigveda has regarded plants having its devine power. Lord Surya Devta, Vayu Devta, Agni Devta, Varun Devta, Mother Earth, Vanya Devi, etc. have been symbolised as different elements of nature in verses of these vedas. In view of such consideration, felling of trees, polluting air, water and Land had been regarded as sin in those literature since these elements were to be respected and regarded as a symbol of God and Goddesses. Maintaining purity and wholesomeness in all these elements had been considered as sacred duty of each and every person of the mother earth as it appears from these religious scriptures. It had been also considered in those literatures that saving of trees is the religious duty of every person and in order to do so they must regard every tree
The Hindu way of life and thinking under religious perspective always give emphasis on showing respect and honour towards nature. Under the Hindu mythology, it was believed that supreme being had actually made itself embodied within the various species of all living beings and every human being should honour and care all other species with great respect. Actually Hindu philosophy of life as it appears from various Hindu religious or mythological texts, teaches the mankind to love the nature and its various components with heart and soul and to consider as the inseparable part of their lives. This thing has been also expressed in various ancient Indian Classic Literatures, like 'Avigyanam Sakuntalam' written by great Poet Kalidas who had prudently described that how people of ancient India used to love and admire nature and its other creations. It may be further mentioned here that killing of animals is very much against the basis of Hindu way of life - Ahimsa (Non-violence).

All these principles, as derived from Hindu religious thought and belief, show that the concept of environment protection is closely linked with Hindu religion. Worship of trees and Plants as a religious duty under Hindu mythology had ultimately helped to create an environmental ethics which became the guiding force not only during olden times but also in present age for environment protection and all those are considered as effective guidelines both for the legislatures, who enact Legislation for the protection and preservation of environment and for the judiciary who invoke such Legislations for the benefit of the society and its inhabitants.
5.1.2.c Environment Protection under Buddhism

Buddhism came into existence by the end of vedic period. This particular religion is based upon truth, non-violence, respect and love for the living beings including trees and plants.

Simplicity and non-violence are the two cardinal principals of Buddhism which had been founded by Goutam Buddhas around 500-550 B.C.. Buddhism emphasised very much over the rational use of natural resources by the man. This religious thought used to preach people about this behavioural idology that a high decree of human satisfaction might be achieved by means of a relatively low rate of material consumption and it helps people to live without pressure and strain.

The teaching of Buddha speaks for tolerance and reverence behaviour not only towards human beings but also towards all living beings including the plants and threes. Under this religious teaching every follower of Buddha should implant trees in every year and to look after those plants until they are safely grownup. According to the spirit of this religious belief, one should abstain from killing animal either for pastime pleasure or even for sacrifice. Buddhism not only forbids the destruction of animal life but also regards it as a duty of human being to take care of the well being of all animals.

So all these teaching of Buddhism\textsuperscript{15A} was very much in favour of protection and preservation of environment and its various natural resources, including all the living beings. Preaching and teaching of Goutam Buddha, the founder of the Buddhism, has been promoted by various rulers of our Ancient India. Ashoka the great was one of them.

\textsuperscript{15A} For further details see: Narasu, P. lakshmi; The Essence of Buddhism; Edition 1976, page 51-55.
He promoted the planting and preservation of flora and fauna. He prescribed various punishments for hunting of the living animals including small creatures, like ants, squirrels, rats, birds etc. He also prescribed high degree of punishment for felling of trees. So it was the excellent example of the effort to protect and preserve the environment being the believers and followers of Buddhism.

So in this way Buddhism had also contributed lot in developing environmental ethics in ancient India, since the preservation and protection of the environment became one of the main objectives of preaching and teaching of this religious faith and believe.

5.1.2.d Environment Protection under Jainism

Almost in contemporary period of introduction of Buddhism, another religious faith and belief had come into existence in India and that was Jainism which was extended in large scale by Mahabir Jain.

Jain religious faith and belief emphasised on maintaining harmony between man and man and between men and nature. This religious belief had laid down emphasis on minimum destruction of living and non-living resources for the satisfaction of material needs and comfort of the human being.

The spirit of the Jain precepts is based on 'Ahimsa'. Jainism prohibits the eating of any kind of meat. 'Ahimsa' has been given the greatest importance and has been called as the highest virtue i.e. (Paramodharmah). So this type of religious teaching of Jain faith and belief is clearly for the protection and preservations of the natural environment. It is mandatory for the Jainist to renounce fifteen monastic vows known as 'Karamdan' and some of the vows, "viz. Vankarm,  

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17. Ibid.  
18. Ibid.
Sphotrk Karm, Nirlanchan Karm and Asatipashan Karm19, are related to the matter of environment protection.

So in this way Jainism has also contributed lot in developing environmental ethics in India.

5.1.2.e Environment Protection under Sikhism

Sikhism (Khalsa) emerged, as another religious belief which is comparatively recent one than other religious thoughts and beliefs in India. According to religious belief of Sikhs, there is "one way, one love, one beauty shines through air, water and fire"20. Actually it speaks of integrity and unity of the world environment. As per this belief, world community is considered as one single family living in a harmonious, unified environment and the person, who can respect this sense of world unity under environment perspective, can survive with honour and dignity. This religious thought expresses its most precious virtue of protecting and preserving the natural environment through its preaching and teaching. It also emphasised on sustainable use of natural environment and its resources for the benefits of mankind in respect of food, nutrition, health and good living. In Gurunanak Bani (Religious speech of Sikh), the term 'Jagat'21 refer to the world and convey the idea regarding creation of it from the elements like, water, fire and air, as created by the God. So according to this Sikhism, the inherent spirit of God is present in nature and its every element. From this religious thought it apeareas that sikhism also bears the same traditional Hindu religious notion that nature is the creation of God and a part of it and

19. Ibid.
it is the object of love and respect. So in this way, Sikh religious faith and belief also embrace the spirit of environment protection through its religious teaching and preaching.

5.1.2.f Environment Protection under Islam

Under the domain of Islamic religious thought and belief, the environment and ecology are considered as the subject matters of immense importance to make the society a habitable one with proper peace and tranquility.

If any body wants to understand the importance attached to the environment and ecology under Islamic religious thought and belief, he should first understand the meaning of Islam. One of the meanings of the word Islam is “to enter into peace” and Muslim makes his place a peaceful abode by maintaining peace and tranquility not only with God but also with other cohabitants, without doing any evil or causing any injury to them.

According to Islamic belief and thought, the God has created this earth and the mountain hills and dales, valleys and slopes, rivers and springs, forests and the plains have been implanted therein, where animals, birds and different other living creatures and of course the human being inhabit. According to 'Holy Quran', all these matters, such as mountains, hills, valleys, rivers and springs, etc., are provided by the God for the service of mankind and for their use and enjoyment, but men should not forget that there are also various other living beings that also have an equal right to enjoy and use such natural resources.

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22. Ibid at Page 29; for further details see Ali, Moulana Muhammad; The Religion of Islam, 1st Edition; page 2.
and for that reason, men should use the nature and its resources for his own needs not beyond the tolerable limit by clogging the scope of others. So this is the finest example of religious patronage of the concept of environment protection and preservation of natural resources including all the living organisms.

According to the 'Holly Quran', God is the owner of the Land and other natural resources of this universe and the person, whoever is incharge or in possession or control thereof, is only a trustee but all the creatures of God are the beneficiaries of these natural resources. However the prophet has sanctioned and permitted to have a right over the produce of the barren land, which is not belonged to any one, in favour of the person who ever cultivate such land. According to this religious belief, it is open to a community to enjoy the shade of a tree, to eat the fruit of such trees and, even the people are allowed to cut tree only if it is necessary. Therefore Islam is not only caring for the protection of environment and preservation of natural resources but it also encourage for the limited use of natural resources. It is on the other way supporting the concept of sustainable development in the society.

So there is no doubt that like other religious faith and belief, Islam has also lot of contribution in developing Environmental ethics in India, since 'Holly Quran' has laid down several religious teaching and preaching aimed at preservation of nature and its various creations, including all the living beings22A.

From the aforesaid discussions it is clear that India possessses the tradition of tolerance, non-violence and equality from religious and

spiritual perspective. Within the domain of this cultural tradition, compassion for nature, animals, and other living creatures, including both flora and fauna has become an integral part of daily life of an Indian and this cultural tradition has been influenced by various religious thoughts and believes of this country. Here the religious teachings, along with social and political norms and economic policies of olden times considered human being as a part of nature and its protector also but none of the religious belief prevailed in India can allow the human being to act as a destroyer or exploiter of the nature. According to the almost all the religious beliefs, Air, water, land, animals, plants and other elements of environment are considered as the creation of one supreme power, the God and God is present within its each and every creation and as such it is desirable to show regard and honour to the nature and men should live in harmony with the nature without causing any destruction or damage to it.

This doctrine of human behaviour is the real basis of human life under religious and spiritual perspective. Ultimately this doctrine, being sanctioned by almost all the religious thoughts and believes in India has helped to build up environmental ethics and values which may be considered as the back bone of environmental Jurisprudence in India.

5.1.3. Judicial Perception of Ecology and Environmental Protection under Historical and Religious perspective.

As it appears from the foregoing discussion in this chapter, Indian has a long Tradition of environment protection and preservation of natural resources right from historical past and since then, such tradition had been a part of day to day life of the people of this country.
Different religious and spiritual thoughts and beliefs including various socio-political norms and guidelines had also played an effective role in this country in developing social and moral ethics relating to environment protection and conservation of natural resources. As a result, general environmental awareness, based on such social and moral ethics, had been developed amongst Indians, irrespective of cast and creed since long.

Such development has also influenced Indian Judiciary in dealing with environmental issues. Indian Judiciary has accepted as well as applied such social and moral ethics relating to environment protection and conservation of nature in its various judicial pronouncements right from pre-independence period at the time of adjudication of various issues involving environmental and ecological affairs, as discussed below.

In a very old case, *Jumna Bai vs. Kimji*\(^{23}\), arising out of a dispute regarding public charitable endowment, court had accepted the extended view for 'Public Charity' and 'benefit for public' as taken by the Testator in question at the time of making charitable endowment in dispute by which both, human being and animal had been treated under same category for getting any kind of benefit of public charity. In this case\(^{24}\), Court of Law had delivered its judgement on the basis of a notion as not to show any kind of cruelty or hatred towards any living organism, based on such moral and ethical value as developed due to religious and spiritual teachings and preachings which speak for tolerance and love for all the living beings.

\(^{23}\) ILR 14 Bom 1
\(^{24}\) Jumna Bai vs. Kimji (ILR 14 Bom 1)
In this regard almost identical view has been taken by Courts in few other cases, such as *Birendra Krishna Vs. Akram Ali*\(^ {25}\), *Kublal vs. Ajodhya Missir*\(^ {26}\), etc.

Regarding Judicial perception of the concept of ecology and environment protection under historical and religious perspective, another precious judgement, delivered by no other person than Sri Asutosh Mookerjee, J., can be referred here. In the case of *Chandra Mohan Ganguly vs. Jnanendra*\(^ {27}\), where a dispute arose regarding validity of debutter of a plot of land upon which a group of five trees known as 'Panchabati' was planted and consecrated by the testator, Justice Mookerjee had given a detailed description of the ceremony of 'Pratistha' for trees and groves as it occurred in 'Matsyapuran', the vedic literature, where in one tree had been regarded equal to ten sons, and His Lordships had established the view that implanting a group of five trees, known as 'Panchabati', is a valid debutter, since the founder used to go to that panchabati everyday, and performed his puja and seating on the vedi he used to engage in pious and religious meditation.

So, in this case\(^ {28}\), by accepting the validity of debutter of Land dedicated for implanting Panchabati, Justice Mookerjee had acted upon such notion that plantation is a sacred duty and it must be protected and preserved and should not be destroyed treating it as an object of dedication and 'puja'. Actually this 'notion' has been derived from the spiritual and religious thoughts and beliefs so as not to spoil the environment and to protect the nature as believed, by the Indians, since long back.

\( ^{25}\) ILR 39 Cal 439.
\( ^{26}\) 43 Cal 575.
\( ^{27}\) 27 CWN 1033
\( ^{28}\) Chandra Mohan Ganguly vs. Jnanendra, 27 CWN 1033; AIR 1924 Cal 400.
An another case, *Mariyappa vs. Puttaramya* 29, in dealing with the dispute regarding Hindu Religious Endowment, status of 'Sadavartas' talas, seats of bearing and homes for the disabled and destitute had been accepted by the court of law as the object of charitable endowment like the 'mutt' and 'idol' as recognised by the Hindu Law and the Court of Law had also approved its maintenance like Hindu 'idol' as sanctioned by the law. So by this judgement court of Law has acted in accordance with such religious thoughts and beliefs where under water, trees and other objects had been considered as body of God and its protection had been urgently necessary and such objects should not be allowed to destroy by means.

An almost similar observation has been made by the Rajasthan High Court in a case, *Mangilal vs. Smt. Durga Devi* 30, wherein dedication of a garden for public purposes has been held as a charitable act in terms of the law of Hindu religious endowment based on the religious and spiritual thoughts and beliefs as prevailed since vedic times.

Like this judicial pronouncement of earlier days, Indian Judiciary, both of different State High Courts and of the Appex Court, has also delivered judgements regarding recent cases under the influence of the age old traditional concept of environment protection, as well as the religious and spiritual thoughts and beliefs governing the environmental aspect, as prevailed in India since long.

In *T. Damodhar Rao and Others Vs. The Special Officer, Municipal Corporation of Hyderabad and others* 31, while dealing with the issues

29. AIR 1958 Mys. 93.
30. AIR 1968 Raj 314.
regarding legality of use of land, owned by the Life Insurance Corporation of India and the Income Tax Department, Hyderabad, in a recreational zone within the city limits of Hyderabad, for residential purposes violating the development plan of the State Authority, Andhra Pradesh High Court had decided the entire issues from the environmental law point of view.

In deciding the case it has been observed by the High Court that the objective of the environmental law is to preserve and protect the nature's gifts to man and woman, such as air, earth and atmosphere from pollution and the Environmental Law is based on the realisation of mankind of the dire physical necessity to preserve these invaluable and none too easily replenishable gifts of mother nature to man and his progeny from the reckless wastage and rapacious appropriation that common law permits, interalia.

From this observation, it appears that at the time of adjudication of this case judiciary had been greatly influenced by the traditional concept of ecology and environment protection under religious perspective where under nature had been considered as mother of the mankind and such mother-nature should be protected and preserved without causing any injury to her by way of reckless exploitation of its precious material resources which are absolutely irreplaceable in nature.

Almost similar view has been taken by the Judiciary in *Kinkri Devi and another vs. State of Himachal Pradesh and others*\(^{32}\) wherein Himachal Pradesh High Court has given emphasis on the necessities of regulatory measures to bring about proper balance between the conservation of nature resources and the protection of environment and

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\(^{32}\) AIR 1988 H.P. 4.
ecology on one hand and the need for development and industrial growth of the country on the others, so that environment and its natural resources may not be over exploited for the sake of development and industrial growth of the country.

Here another case may be mentioned as decided by the Kerala High Court. In this case, *F. K. Hussain vs. Union of India*[^33], Kerala High Court has delivered its judgement in the same line as above. Here, Kerala High Court has expressed its view regarding concept of environment protection under the influence of spiritual thoughts and beliefs.

In this regard, like various state High Courts, Supreme Court has also played very effective role in adjudicating various environmental issues under the influence of historical and religious perspective as discussed below.

In famous *Taj Bengal Case (Sachidanand Pandey and another vs. The State of West Bengal and Others)*[^34], at the time of adjudication of a dispute arising out of a proposal for construction of a five star hotel in Calcutta just infront of the Main Zoo Garden located in Alipore and its probable environmental consequences, Supreme Court had made certain observations from environmental point of view, under religious and spiritual perspective, and one of such observations, as referred below, is a precious one — "You must teach your Children that the ground beneath their feet is the ashes of our grandfather. So that they will respect the land. Tell your children that the erath is rich with lives of

[^33]: AIR 1990 Ker 321.
[^34]: AIR 1987 SC. 1109.
our Kin. Teach your Children, what we have taught our children, that the earth is our mother. Whatever befalls the earth befalls sons of the earth. If man spit upon the ground, they spit upon themselves."35

Actually, this observation is nothing but a reflection of acceptance of spiritual thoughts and beliefs, as the fundamentals of moral ethics regarding environment protection and preservation of natural resources within the realm of Indian legal framework.

In another case, which is popularly known as Ganga Pollution (Kanpur tanneries) case (M.C. Mehta Vs. Union of India and Others)36, for the protection and preservation of the water of the River Ganga, Supreme Court had also invoked the concept of environment protection through its judgement in the light of the spiritual and religious thoughts and beliefs as prevailed in India since the period of historical past, as it appears from the following observation of the Supreme Court — "Water is the most important of the elements of the nature. River Valleys are the cradles of civilization from the beginning of the world. Aryan civilization grew around the towns and villages on the banks of the river Ganga. Varanasi which is one of the cities on the banks of the river Ganga is considered to be one of the oldest human settlements in the world. It is the popular belief that the river Ganga is the purifier of all but we are now led to the situation that action has to be taken to prevent the pollution of the water of the river Ganga since we have reached a stage that any further pollution of the river water is likely to lead to a catastrophe"37.

35. Sachidananda Pandey and another Vs. the State of West Bengal and Others, AIR 1987 S.C. 1109 (1113).
36. AIR 1988 SC. 1037.
37. M.C. Mehta vs. Union of India & Others, AIR 1988 SC. 1037 (1038).
In this regard, Supreme Court has finally observed that Steps have to be taken for the purpose of the protecting the cleanliness of the stream in the river Ganga, which is in fact the life sustainer of a large part of the northern India. So with these observations, Supreme Court has given emphasis on the protection and preservation of wholesomeness of the river water, specially of the River Ganga considering it as an emblem of culture and tradition of this country right from historical past.

In 'Doon Valley' case, which had been come up for adjudication before the Supreme Court in the form of two writ petitions (Writ Petition (Civil) Nos. 8209 and 8321 of 1983) arising out of the grievance of ecological disturbance in the Mussorie - Dehradun Belt due to alleged unauthorised and illegal mining of lime stone in the said area of Himalayan Ranges, after passing the initial order, dated 12th March, 1985 (as reported in AIR 1985 SI. 652), Supreme Court has passed few such other orders and one of such orders being dated 30th August, 1988, reported in AIR 1988 S.C. 2181 (Rural Litigation and Entitlement Kendera, vs. State of U.P.) has been passed by the Supreme Court in the light of Indian Culture and Tradition speaking for the concept of environment protection and mainteannce of ecological balance, as it expressed in 'Meghdoot', the ancient Indian literature of olden times written by Kalidas, the greatest Indian Poet of ancient India as it has been referred in Doon Vallye Case38.

So in this way, Indian Judiciary, right from pre-independence period, has contribute lot in dealing with environmental issues under Historical and religious perspective as discussed above. With this contribution of

Indian Judiciary, concept of environment protection has been developed in the light of religious sanctity and spiritual thoughts and beliefs and ultimately such concept has become part of the environmental jurisprudence in India.

5.2 Constitutional Mandate for The Protection of Environment and Natural Resources and its Judicial Perception

Indian constitutions has laid down certain specific provisions regarding the matter in connection with environment protection. It may be mentioned here that if Indian constitution is compared with the constitution of other country, it would appear that Indian Constitution is amongst very few written constitutions that contains some specific and comprehensive provisions for environment protection and for the preservation of Natural resources, as it is referred below.

5.2.1. Constitutional Development in U.S.A.

In this regard, if the international perspective is considered, it would appear that the constitution of the World's Largest Republic, the United States of America, has no such specific provision which may be directly related with environment protection. But there is certain provisions under the American Constitution which can be invoked indirectly for the protection of environment, specially the human environment.

As per the provision of section 2 of the Article XXI, as passed by
Congress on February 20, 1933 and ratified on December 5, 1933, the transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors in violation of the laws thereof, is hereby prohibited. So this provision of the American constitution can be well used for the protection of human environment by imposing a prohibitory order in transportation or importation for delivery and use of intoxicating liquors. Actually it has been made for the purpose of imposing restriction in using intoxicating liquor and to protect the lives of the people from the deadly effect of intoxicating liquor.

Other than this provision of Article XXI of the Constitution of the United States, nothing can be available specifically to use for the purpose of environment protection either directly or indirectly.

But one thing can be mentioned here that power of judicial review, as vested in one Supreme Court and in such inferior courts as the congress may from time to time ordain and establish under the provision of section 1 and 2 of Article III of the constitution of the United States, can be well invoked to redress the grievances of the citizens arising out of the Environmental and Ecological disorder. In this regard, one reported case, United States vs. SCRAP may be referred, since it is one of the finest examples of judicial review in case of controversies between

39. Article III, Section-1 of the Constitution of the United States says as follows — "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in offic."

Article III, Section-2 of the Constitution of the United States says as follows — "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; — to all cases affecting ambassadors, other public miniters and consuls; — to all cases of admiralty and maritime jurisdiction; — to controversies to which the United States shall be a party; — to controversies between two or more States; — between citizens of different States; — between a State and citizens of another State; between citizens of different States; — between citizens of the same States claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects."

40. 412 US 660 (1973)
state parties and the citizen relating to an environmental disorder. In this case, Supreme Court granted relief while an environmental group formed by law students had filed a case with such allegation that increase of rail road rates by the inter-state commerce commission would adversely affect the shipment of the garbage which would disturb the environmental balance around Washington.

In another case, *American Public Health Association vs. Veneman*[^42^], power of Judicial review as vested under the provision of the constitution of the United States, had been exercised by the United States' court in connection with a matter related with the human health and hygiene. In the instant case[^43^], while the American Public Health Association filed a case through the centre for Law and Social Policy (C.L.A.S.P.) with the allegation that a high percentage of ineffective drugs, which was detrimental to the health and hygiene of the people of America, had not been removed by the Food and Drug Administration (F.D.A.) though as per the law Food and Drug Administration is required to remove all ineffective drugs from the market, the American Court ordered the F.D.A. to act immediately to remove all ineffective drugs from market.

In *Environmental Defence Fund vs. Environmental Protection Agency case*, the Court had granted one year ban on the use of D.D.T. when a group of scientists filed a suit against the Suffolk County Mosquito Control Commission with the allegation of adverse environmental impact on wildlife due to extensive use of D.D.T. Latter it was made a permanent law of America. So it is also another example of the power

of judicial review as exercised by the United States' Court, in the matter relating to the environment disorder.

So in this way by the help of the power of judicial review as vested upon the America's Court under the provision of the Constitution of the United States environmental disorder or ecological disturbance can be abated.

Though the constitution of the United States, the written constitution of the World's largest republic, had laid down certain provisions regarding environmental protection, but it will be very difficult to find such kind of provision specifically in any other written constitution of various other nations, except in the constitution of India.

5.2.2. Constitutional Development in UK.

If any body go through the constitution of the United Kingdom, which is mostly unwritten, it can be found that certain portion of legislative work, the written portion of that constitution, contributing to the fundamental rules and principles determining the structure and function of the state, covers the matter relating to environment protection, off course in the form of total legislation, like the Environment Protection Act, 1990, the planning (Hazardous —Substances) Act, 1990, the Water Resources Act 1991, The Radioactive Substances Act 1993, The Clean Air Act, 1993.

The Environment protection Act, 1990 has been enacted to provide controlling measures relating to water pollution through Environment Agency. This Act is also very much concerned with Waste Management.
Actually, the Environment Protection Act, 1990, focusses upon the management of waste throughout its life cycle, rather than concentrating only upon its disposal. This Act includes the definition of 'waste' for providing more specification towards purpose and object of this enactment.

This particular Act has formed the main body of Waste Management Licensing Law along with Waste Management Licensing Regulations, 1994, to regularise the Waste Management System in England. The Waste Management licensing system applies to 'controlled waste' as defined under Section 75(4) of the Environment Protection Act, 1990.44 In Thanet District Council Vs. Kent County Council Case45, the term, 'any such waste' within the perview of the definition 'waste' under the provision of Section 75 (4) of the Environment Protection Act, 1990, has been considered as the Waste not extending beyond the general categories.

In addition, this enactment may be also well concerned about the most latest version of pollution problem, such as catastrophic effect due to handling and in particular any deliberate release of 'Genetically Modified Organisms (GMOs)'46 on human and the environment.

The planning (Hazardous Substances) Act, 1990, has been enacted to provide remedy in the situation arising out of hazardous substances. This Act provides remedy by requiring a 'Hazardous Substances Consent (HSC)'47 before any hazardous substance may be

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44. Sec. 75(4) of Environment Protection Act, 1990, Says 'Household, Industrial or Commercial Waste or any such waste'.
45. [1993] Env. LR 391.
47. For details see generally Wolf, Susan & Anna, White & Neil, Stanley; Principles of Environmental Law; Cavendish Publishing Ltd., London, 3rd Ed. 2002; page 163.
present on any site in more than the amount prescribed for that substance, called the "Controlled Quantity".48

The Water Resources Act 1991, has been enacted to control over water pollution, water quality regulation, water resource issues (e.g. control over obstruction and flood defence) and miscellaneous water related matters including the matters regarding fisheries and navigation. So far pollution controls are concerned, as contained in the Water Resources Act, 1991, apply only in respect of such waters which are defined as 'Controlled Waters'.49 In R vs. Dovermoss Ltd.,50 the Court of appeal held that the term 'Controlled Waters' included 'waters of any water course' and the term 'water course' had been referred to the channel rather than the water itself.

The Radioactive substances Act, 1993, has been enacted to control the keeping and use of "radioactive materials" and of 'mobile radioactive apparatus' and also the accumulation and disposal of radioactive waste. Under this Act 'Radioactive material' has been defined as anything which, not being waste, is any such substance, or an article made wholly or partly from or incorporating such a substance.51 On the other hand, "Radioactive waste" is defined as waste which consists wholly or partly of (a) any radioactive material, as defined, or (b) any substance or article which has been contaminated in the course of the production, keeping or use of radioactive material, or by contact with or proximity to other radioactive waste within (a) above.52

49. For details see generally Wolf, Susan & Anna, White & Nell, Stanley; Principles of Environmental Law; Cavendish Publishing Ltd., London, 3rd Ed. 2002; page 65-66
51. Section 1(1) of the Radioactive Substances Act 1993.
52. Section 2 of the Radioactive Substances Act 1993.
Right from the *Clean Air Act, 1956*, followed by various legislative amendments of this 1956 Act, including *Clean Air Act, 1968*, all these legislations being consolidated into a single form of legislation, the *Clean Air Act, 1993*. Actually this consolidated legislation has been enacted for controlling 'emission of dark smoke'\(^{53}\), including grit, dust or fumes from a Chimney of any building or from any Chimney which serves the furnace of any fixed boiler or industrial plant. Regarding 'dark smoke'\(^{54}\) offence, section 2 of the *Clean Air Act, 1956* has prohibited the emission of dark smoke from Industrial Trade premises. In a case, *Sheffield city council vs. ADH Demolition Ltd.*\(^{55}\), it has been held that the burning of rubbish on a demolition site may also amount to an industrial or trade process and a person, being guilty of an offence of 'emitting dark smoke' from such demolition site under the provision of section 2 of the *Clean Air Act, 1956*, shall be liable on summary conviction to a fine of up to 20,000 pound.

So these legislative acts, including other enactments relating to environmental affairs, which are the very much part of the British Constitution as its written part, may be considered as available remedy against environmental pollution and other ecological disorder within the constitutional frame work in United Kingdom.

### 5.2.3 Constitutional Development in India

#### 5.2.3.a. General Overview

Under Indian Scenario, regarding constitutional mandate for

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54. Ibid.
environment protection, it may be mentioned here that Indian Constitution is amongst the very few constitutions that contain some specific provisions regarding environment protection, as it has been already stated earlier. Indian Constitution in comparison with the constitutions of various other countries is very dynamic and can able to cope with the situation, as developed due to certain emergent circumstances and scope of amendibility due to its flexible nature helps Indian constitution to be a dynamic one. That is why, though at the time of commencement of the Indian Constitution, environmental issues were not at all considered because of lack of consciousness amongst the makers of the constitution regarding environment protection during the mid of the last century, but ultimately matters, in connection with the environment protection and its preservation have been explicitly incorporated within the constitution of India by the constitution (Forty Second Amendment) Act of 1976, to cope with certain emergent situation of world wide pollution problems and to fulfill the commitment as made by India at the Stockholm conference, 1972, as one of the participating nations. In this way environmental issue has received the constitutional recognition in India.

5.2.3.b Legislative Power under the Constitution

The 42nd Amendment of the Constitution has introduced certain changes in the seventh Schedule of the Constitution. It inserted entry 17A consisting of the item Forests in the List III just after entry 17. Similarly the subject of protection of wild animals and birds were also transferred from List II, entry 20 and incorporated in List III and entry 17B.

Entry 20A in the List III dealing with population control and family
planning was inserted for the first time by 42nd Amendment Act of 1976, because enormous increase in population is main cause for environmental problems. So in this way various entries of state list II were transferred to list III (concurrent list) which empowered the Parliament to legislate on these environmental issues, such as forests, wild life, population control, family planning. This Act of amendment actually shows concern of parliamentarians of this country to give priority to environment protection. Previously forest, wild life and population control were subjects of state list on which the state had exclusive power to make laws, but now the concurrent list enables both, the Centre and the State to make laws on these subjects. So this 42nd Amendment has ultimately widen the scope of Environment legislation for the protection of environment and preservation of natural resources in India.

Chapter I under part-XI of Constitution of India, provides for Legislative relations between the Union and the State Governments. It provides a system under which the Central Legislature (both Houses of Parliament) and the State Legislatures (Legislative Assembly) can make law on the subjects as specified in the Union list and State list respectively attached with the seventh schedule of the Constitution. Under certain circumstances, by invoking Articles 252(1) of the Constitution of India\textsuperscript{56}, the Central legislature (parliament) can also legislate on the items enumerated in the State list. But Article 253 of the Constitution empowers the parliament to make enactment on any matter of implementing the

\textsuperscript{56}. Art 252(1) of the Constitution of India says as follows — "If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which parliament has no power to make laws for the States except as provided in articles 249 and 250 should be regulated in such states by Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those states, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the legislature of that State".

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International obligations and decisions taken at the International Conference, association or other Body’s meeting. This Article 253 of the Constitution says as follows -

"Notwithstanding anything in the foregoing provisions of this chapter, parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body". Actually Article 253 empowered the parliament to legislate on all matters related to the preservation of natural resources on the basis of declaration of Stockholm Conference, 1972.

Thus to implement the decisions of the Stockholm conference of 1972, an international conference, parliament passed many Central legislations, viz., the water (prevention and control of pollution) Act, 1974, The Water (Prevention and control of Pollution) cess Act, 1977 and The Air (Prevention and control of Pollution) Act, 1981. The environment (Protection) Act of 1986 has also been enacted to implement the consensus decisions of the international conference at Stockholm (1972) to preserve the natural resources. In this way, the decisions, taken at the Stockholm Conference at 1972, was implemented by invoking Article 253 of the Constitution by the Government of India as its international obligation.

It may be mentioned here that list III (Concurrent list) of Schedule VII of the Constitution of India also empowered the Indian Parliament to enact laws on various aspects relating to environment. This list includes subject like forests, protection of wildlives, mines and minerals...
development, population control and family planning and minor ports and factories which are either directly or indirectly related with the environment. Ultimately Indian Parliament has passed various Laws on these subjects by exercising its power, as provided under the Constitution of India.

5.2.3.c Directive Principles of State Policy

This 42nd Amendment incorporated two significant Articles. Articles 48A and 51A(g) in the constitution as an obligation of the state and the duty of the citizens respectively to protect and improve the Indian Environment in India. Articles 48A was added to the list of Directive principles of State policy under Chapter-IV of the Constitution of India. This Article 48A of the Constitution of India is an obligatory duty entrusted upon the State to endeavour to protect and improve the environment and to safeguard the forest and wild life of the country. Actually Article 48A of the constitution provides safeguards to forest and wild Life of this country alongwith the general environment. Article 51A(g) of the Constitution of India, which has been also inserted along with Articles 48A into the constitution, specifically deals with the fundamental duty regarding environment. It has imposed fundamental duty on all citizens to preserve and protect the environment and have compassion to all living creatures. Having regard to the grave consequences of the pollution of water and air and the need for protecting and improving the natural environment, this fundamental duty has been entrusted upon the each and every citizen of India to protect and preserve

57. Article 48A of the Constitution of India says as follows - "The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the Country".
58. Article 51A(g) of the Constitution of India says as follows — "It shall be the duty of every citizen of India - to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures".
the natural environment.

In *Sri Sachidananda Pandey and another vs. State of West Bengal and others*\(^5^9\), popularly known as Taj Bengal Case, Supreme Court has given importance in recognising and enforcing the provision of Article 48A and 51A(g) of the Constitution of India to protect the environment and to safeguard the natural resources, including the forests and wildlives of the country. This line of approach of the Supreme Court regarding environmental protection within the perview of article 48A and 51A(g) of the constituion of India is well understood from the following observation of the Supreme Court as made in this Taj Bengal case — "whenever a problem of ecology is brought before the court, the Court is bound to bear in Mind Art. 48A of the Constitution, Directive Principle which enjoins that 'The State Shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country', and Art. 51A(g) which procliams it to be the fundamental duty of every citizen of India 'to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compasion for living creatures'. When the court is called upon to give effect to the directive principle and the fundamental duty the court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy making authority\(^6^0\).

In *M.C. Mehta vs. Kamal Nath and Others*\(^6^1\), Supreme Court has held that Articles 48A and 51A(g) of the Constitution of India have to be considered in the light of article 21 of the Constitution of India.

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59. AIR 1987 SC. 1109
60. Sri Sachindananda Pandey & Another vs. State of West Bengal & Others, AIR 1987 SC. 1109
which provides that no person shall be deprived of his life and liberty except in accordance with the procedure established by law. In this regard, it has been also held that any disturbance of the basic environment elements, namely air, water and soil which are necessary for life, would be hazardous to 'life' within the meaning of Article 21 of the Constitution of India.

In *Kinkri Devi & another vs. State of Himachal Pradesh & Others*\(^\text{62}\), Himachal Pradesh High Court has considered the provision of Article 48A and 51A(g) of the Constitution of India as the constitutional pointer to the state and a constitutional duty of the citizens, respectively not only to protect but also to improve the environment and to preserve and safeguard the forests, the flora and fauna, the rivers and lakes and all other water resources of the country. In this regard it has been also held that the neglect or failure to abide by the pointer or to perform the duty is nothing short of a betrayal of the fundamental law which the state and indeed, every Indian, high or low, is bound to uphold and maintain.

In *M.C. Mehta vs. State of Orissa and Others*\(^\text{63}\), Orissa High Court has recognised the Article 48A and 51A(g) of the constitution of India, as the foundation for a jurisprudence of environmental protection. In this case it has been observed by the Orissa High Court in conformity with its aforesaid recognition as follows — "Today, the state and the citizens are under a fundamental obligation to protect and improve the environment, including forests, lakes, rivers, wild life and to have compassion for living creatures"\(^\text{64}\).

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\(^\text{62}\). AIR 1988 H.P.A.
\(^\text{63}\). AIR 1992, Ori 225.
\(^\text{64}\). M.C. Mehta vs. State of Orissa and Others, AIR 1992 Orissa 225 (227).
In addition to all these aforesaid constitutional provisions, there are also few other constitutional provisions which may be also invoked for the purpose of protection of human environment either directly or indirectly.

Article 39(f) of the Constitution, which has been also inserted into the Constitution by Constitution (Forty-Second Amendment) Act, 1976, may be invoked indirectly for the protection and preservation of human environment in this country as follows —

"The State shall, in particular, direct its policy towards securing — that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment".

So indirectly this constitutional provision may be considered as a protective measure for the protection of human environment and secure proper and good health and hygiene specially for the children and youth relating to the environment.

Another two constitutional provisions as laid down under Part IV of the Constitution of India, i.e. Article 42 and 43 of the constitution of India may be also considered as protective measures for the protection of human environment, specially in the place of working.

Article 47 of the Constitution of India is one of such provisions.

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65. Article 42 of the Constitution of India says as follows :-
"The State shall make provision for securing just and human conditions of work and for maternity relief".

Article 43 of the Constitution of India says as follows :-
"The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers agricultural, industrial or otherwise work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the state shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.
which may be also indirectly invoked for the protection of human environment by saying as follows — "The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health". So according to this Article 47 of the Constitution, the State shall regard the improvement of the public health as its primary duty. In this way the Article 47 of the Constitution speaks for the protection of environment in the way of improving the public health and hygiene.

In Municipal Council, Rathlam vs. Vardichand and Others\textsuperscript{66}, Supreme court has observed that the State will realise that Article 47 of the Constitution of India makes it a paramount principle of governance that steps are taken for the improvement of public health as amongst its primary duties. So this observation has recognised the significance of Article 47 of the constitution of India in protecting human environment in this country.

Another constitutional provision, as laid down under the Article 48 of the Constitution of India\textsuperscript{67} provides the directives for the protection and preservation of the life stock along with its development including organisation of the agriculture and animal husbandry.

In a very early case, Mohd. Hanif Quareshi and Others vs. State

\textsuperscript{66} AIR 1980 S.C. 1622.

\textsuperscript{67} Article 48 of the Constitution of India says as follows :-

The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.

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of Bihar and Others, Article 48 of the Constitution of India has been well invoked by the Supreme Court for the protection of any kind of species of cattle from the slaughtering in view of this consideration that the directive contained in the latter part of the Article is quite specific and enjoins the prohibition of slaughter of any of the species of cattle irrespective of their utility from the standpoint of agriculture or animal husbandry.

5.2.3.d Fundamental Rights

In addition to all these constitutional mandates, certain provisions of fundamental rights, specially provisions under of Article 21, as laid down under Part III of the Constitution of India, have also appeared as an useful weapon for the environment protection. Article 21 of the Constitution of India has provided literally only 'right to life' and 'personal liberty' and it does not confer any such other right, like right to have clean, pollution free and healthy environment. Actually various judicial pronouncements on various occasions have expanded the scope of right to life and personal liberty in a popular way by judicial interpretation in India and as such within the ambit of right to life and personal liberty, as guaranteed under Article 21 of the Constitution of India, right to have a clean and healthy environment has been recognised by the Indian Judiciary as a fundamental right.

It may be mentioned here that the Supreme Court has given a wider interpretation to the fundamental rights as guaranteed by the constitution under Article 21 and such guarantees should not be allowed to be

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68. AIR 1968 S.C. 731
69. Article 21 of the Constitution of India says as follows:—

"No person shall be deprived of his life or personal liberty except according to procedure established by Law".

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emasculated in their application by a narrow and constricted judicial interpretation, as observed by the Supreme Court in the case of *M.C. Mehta and another Vs Union of India and Others*\(^{70}\) on the basis of criteria as evolved in the *Ramana Shetty's case*\(^{71}\). In this regard another observation has been made in a reported case, *Consumer education and Research Centre Vs Union of India*\(^{72}\), in the following manner - "The expression 'life' assured in Article 21 of the Constitution does not connot mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of life, hygienic conditions in work place and leisure"\(^{73}\).

Thus, this right inculdes the right to have a 'living environment' necessary for human exisstance. Any activity which pollutes the environment and makes it unhealthy, hazardous to human health, including the health of flora and fauna, is violative of right to have 'living environment', implicitly guaranteed by Article 21 of the Constitution. Actually it has been recognised by the judiciary that right to life, provided under Article 21 of the Constitution of India, is wide enough to encompass various aspacts of this right which also include right to have a clean and pollution free environment and ultimately this right to have a clean and pollution free environment has been recognised as a fundamental right within the scope of Article 21 of the Constitution of India by the Indian Judiciary.

\(^{70}\) AIR 1987 SC 1086 (1094)
\(^{71}\) Ramana Dayaram Shetty Vs. The International Airport Authority of India and others, AIR1979 SC 1628
\(^{73}\) Consumer Education and Research Centre and Others Vs. Union of India and others, AIR1995 SC 922 (939).
Article 32 of the Constitution is one of the fundamental rights known as 'Right to Constitutional Remedies' for the enforcement of the fundamental rights. This Constitutional obligation to protect the fundamental rights has been entrusted upon the Supreme Court of India under Article 32 of the Constitution of India and on the State High Courts under Article 226 of the Constitution of India.

Here Article 32 of the Constitution is a fundamental right and Supreme Court of India can entertain a writ petition for the enforcement of the fundamental rights of the citizens of India and it can issue various orders, directions and writs in the nature of Mandamus, Certiorari, etc., from time to time by invoking provision of Article 32 of the Constitution of India.

In oleum gas cases, as reported in M.C. Mehta and another vs. Union of India and Others, Supreme Court observed that some seminal questions concerning the scope and ambit of Article 21 and 32 of the constitution of India had been raised in this case. By making such observation, Supreme Court had manifestly accepted the provision of Article 21 of the constitution of India as an useful and effective constitutional mandate by invoking which life can be protected from the hazard of environmental pollution within the scope and ambit of the

74. Article 32 of the Constitution of India says as follows:

"(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution."

Article 32 of the Constitution of India. In this regard Supreme Court by issuing necessary directions for environment protection under the writ jurisdiction, makes it evident that the Supreme Court is competent enough to use Article 32 of the Constitution of India to enforce the fundamental rights for the purpose of protecting the lives of the people, their health and ecology from the hazardous effect of the pollution.

Like Oleum gas cases, as stated above along with many other cases, in *Delhi Industries Pollution Case*\(^{76}\), Supreme Court has also successfully invoked the writ jurisdiction under Article 32 of the Constitution of India for the protection of environment and ecology by passing the order for the shifting of 168 hazardous industries operating in Delhi and to relocate themselves at outside Delhi before the shifting date since they had been causing danger to the ecology.

Comparatively in recent time, writ jurisdiction under Article 32 of the constitution of India has been exercised by the Supreme Court in more dynamic way. Even Supreme Court has awarded damages to the pollution victim under this writ jurisdiction. In this regard, *M.C. Mehta vs. Kamal Nath and Others*\(^{77}\) is the glaring example. In this case, Supreme Court has held that the powers of the court under Article 32 of the constitution of India are not restricted and it can award damages in a Public Interest Litigation or Writ Petition. Ultimately in the case, in the subsequent order, as reported in *(2002)3 SCC 653 (M.C. Mehta Vs. Kamal Nath)*, Supreme Court has imposed 'exemplary damages' of Rs. 10 lakhs on M/s. Span Motel Ltd., the polluter, by invoking the writ jurisdiction under Article 32 of the Constitution of India.

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Similarly, different State High Courts can also exercise all these powers of writ jurisdiction, vested under Article 226 of the Constitution of India for the purpose of enforcement of the Fundamental rights including other legal rights. In this regard, Andhra Pradesh High Court has delivered a very significant judgement in *T. Damodhar Rao vs. S.O. Municipal Corporation, Hyderabad*\(^7\)\(^8\) wherein the writ jurisdiction under Article 226 of the constitution of India has been successfully invoked for the protection of environment and preservation of Nature within the perview of Article 21 and 48A of the constitution of India. Finally Andhra Pradesh High Court has issued a writ of Mandamus against raising structure on the land under the State Authorities and directed the State Government to remove them as construction on the recreation zone of park amounting to violation of the Right to life guaranteed under Article 21 of the Constitution of India. So this is an ideal example where a state High Court has exercised writ jurisdiction under Article 226 of the Constitution of India for the protection of Environment.

Almost in similar manner, Karnataka High Court in *V. Lakshmipatty vs. State of Karnataka*\(^7\)\(^9\) has invoked the writ jurisdiction under Article 226 of the constitution of India extending the scope of Article 21 for maintaining the quality of environment with the following observation — "The right to life inherent in Art. 21 of the constitution of India does not fall short of the requirements of qualitative life which is possible only in an environment of quality. Where, on account of human agencies, the quality of air and the quality of environment are threatened or affected, the court would not hesitate to use its innovative power within its epistolary

\(^7\)AIR 1987 AP 171.
\(^8\)AIR 1992 Kant. 57
jurisdiction to enforce and safeguard the right to life to promote public interest."80.

In connection with this power of writ jurisdiction, it may be mentioned here that Article 32 of the Constitution of India not only confers power upon the Supreme Court to issue a direction, order or writ for enforcement of the fundamental rights but it also lays a constitutional obligation on the Supreme Court to protect the fundamental rights of the people. Here scope of Article 226 also can not go beyond the above mentioned purview of the Article 32 of the constitution of India regarding its constitutional obligation.

So in this way provisions of the Article 32 and Article 22681 of the Constitution of India are invoked to control environmental pollution and to protect and preserve environment under the writ jurisdiction of the Supreme Court and various State High Courts respectively.

80. AIR 1992 Kant. 57 (70)
81. Article 226 of the Constitution of India says as follows:—
"(1) Notwithstanding anything in article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.
(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.
(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without —
   (a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order, and
   (b) giving such party opportunity of being heard,
makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.
(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32."
Thus Environment protection has found itself in a special position in the Indian Constitution. The Fundamental Rights and Directive Principles of State policies under the Constitution of India, along with its Judicial perception, have enunciated national commitment of this country to protect and improve the environment as well as to highlight the national consensus on the matter of environmental protection and its improvement.

It emerges from the foregoing discussion that almost all the religious and spiritual beliefs support the necessity of environment protection and help to develop environmental ethics and values which would entail respect for nature. Ultimately this spiritual values and ethics and conception of environment protection under historical perspective became the fundamentals of Indian environmental jurisprudence based on which constitutional mandates for environment protection have been developed in India.