CHAPTER - 3

ENVIRONMENTAL LAW AND INDIAN CONSTITUTION
INTRODUCTION

The Constitution of India focuses on creation and maintenance of a society where every citizen has access to the socio-economic framework to achieve equal status and equal opportunity for realization of the dignity of his personality in a harmonious environment. This goal can only be achieved in the congenial environment. The word environment includes both the natural environment and the cultural environment. The natural environment provides natural resources including energy resources, base for the development of means of transport and free space for disposal of wastes. As a result, natural environment is being degraded and polluted. The Constitution of India, originally, did not contain any direct provision regarding the protection of natural environment. However, Article 21 has been liberally interpreted by the courts and right to wholesome environment has been included within its ambit in 1976 by the Constitutional Amendment Act 1976. Article 48-A was newly inserted and it has imposed a Constitutional mandate on State to protect and improve the environment. By Art 51-A (g) of the Constitution a duty on every citizen has also been imposed to protect and improve the natural environment.

THE CONSTITUTIONAL PROVISIONS

The Constitution is known as the basic law of the land from which all other laws derive their sanctity or validity. Therefore, it must be a living and growing law-means must be able to cope with the newer situations and development. That is why, as and when it is felt that a special situation has arisen and the present Constitutional provisions are not adequate and cannot deal with the new development effectively, they are amended by Parliament from time to time. The then Prime Minister of India, Mrs. Indira Gandhi, was the first head of State to address the first International Conference on Human Environment at Stockholm in 1972, and voiced deep concern about the degradation of the environment and eco-imbalances. She also emphasized that pollution, population and poverty are interrelated problems and there must be an integrated approach to deal with them.
India was also one of the signatories of the Stockholm Declaration which is known as the Magna Carta on Human Environment. Therefore, to fulfill its promise made at the Stockholm Conference, the Indian Parliament passed the forty-second amendment to the Constitution in 1976 and incorporated specially two Articles relating to protection and improvement of the environment. Thus, India became the first country in the world to have provisions on the environment in the Constitution.

The Constitution of India, under Chapter XI, has provided for legislative relations between the Center and State Governments. It provides a scheme under which the Center (both Houses of Parliament and the President of India) and the States (Legislative Assembly and the Governor of the States) can make laws on the items provided in the Union List and State List respectively attached with the Seventh Schedule. Under certain circumstances, the Central Legislature (Parliament) can also legislate on the items enumerated in the State List. But Article 253 of the Constitution empowers parliament to legislate on any matter for implementing the international obligations and decisions taken at an international conference, association or other body's meeting. The Article provides as under:

Article 253: "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, convention with any other country or countries or any decision made at any international conference, association or other body."

Thus, to implement the decisions of the Stockholm Conference of 1972, which was an international conference, was within the competence of Parliament and accordingly Parliament passed many laws, viz. the Water (Prevention and Control of Pollution) Act, 1974, the Water (Prevention and Control of Pollution) Act, 1977 and the Air (Prevention and Control of Pollution) Act, 1981. The Environment (Protection) Act of 1986 has also been passed to implement decisions arrived at the International Conference at Stockholm (1972) to preserve natural resources. Thus, inclusion of Articles 48-A and 51-A(g) relating to environment was a reassertion of the powers of Parliament provided under Article 253. Thus in a way it was an implementation of the international obligation of the country as per the
decisions taken at the Stockholm Conference of 1972. It is to be noted that
this power of the Indian Parliament has never been disputed. Moreover, it
is an enabling provision for Parliament to legislate on the various aspects of
environmental laws.

List III (Concurrent List) 6 of Schedule VII of the Constitution also
provides power to the Indian Parliament on various aspects related to the
environment. This list includes subjects like forests, protection of wildlife,
mines and minerals development, population control and family planning,
and minor ports and factories. Exercising its powers, Parliament has
passed various laws on these subjects. 7

For not putting direct provisions for protection of environment in the
Constitution, the framers of the Constitution, at that time, thought it
negligible problem that is why it did not contain even the expression
“environment”. But careful analysis of various provisions of the
Constitution reveals that three Articles 478 (Improvement of Public Health),
Art 489 (Organization of Agricultural and Animal Husbandry on modern
and Scientific Lines) and Art 4910 (Protection of National Monuments from
Spoliation, Disfigurement, etc.) relate to environment.

The aforesaid provisions are indirectly related to environmental
protection and they are in Part IV of the Constitution that enshrines
“Directive Principles of State Policy”. These provisions are not enforceable
by any court, but the principles therein laid down are nevertheless
fundamental in the governments of the country and it shall be the duty of
the State to apply these principles in making laws. 11

ENVIRONMENTAL PROTECTION AFTER CONSTITUTIONAL (FORTY-
SECOND AMENDMENT) ACT, 1976

The Indian Constitution is amongst the few in the world that
contains specific provisions on environment protection. The directive
principles of State Policy and the fundamental duties chapters explicitly
enumerate the national commitment to protect and improve the
environment.
Environmental protection and improvement were explicitly incorporated into the Constitution by the Constitution (Forty-Second Amendment) Act of 1976. The 42nd Amendment Act clearly spelt out in the amendment to the preamble of the concept of socialism. In the Socialistic; pattern of societies the State pays more attention on the social problems than on any individual problem and the pollution is one of them.

The Constitution being supreme Law of the land shall be binding on not only the citizens and non-citizens but also on the State itself. The Constitution (Forty-second Amendment) Act 1976 inserted specific provisions to protect and improve the environment in the Constitution for the first time.

In pursuance of United Nations Conference on Human Environment convened at Stockholm in 1972, the nations of the world decided to take appropriate steps to protect and improve human environment. The sequel IC this, in India 42nd Amendment to the Indian Constitution inserted Part IV-A of the Constitution which enumerates certain fundamental duties under Articles 48-A\textsuperscript{12} and 51-A (g) \textsuperscript{13}.

This directive principle required that the State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.

There was considerable debate in Parliament over the wording of draft of Article 48-A. It uses the world "environment" which means the aggregate of all external conditions and influences affecting life and development of organs of human beings, animals and plants. The various factors affecting the life of and development of organism are viz. are light, climate culture nose, temperature, soil, water, etc. Under this Article the State may not only adopt the protectionist policy but also provide for the improvement of pollution environment. Statute imposed restriction on the use of factor adversely affects life and development of human being animal and plants. It would be difficult, though not impossible for the State to adopt the means to improve the environment. The State while implementing the principles in Article 48-A shall be immured from the conditions imposed under the Article. Therefore any law relating to
environmental pollution will not be subject to judicial scrutiny on the grounds of Article 14, 19 and 31.

Article 48-A also provide for the safeguards of forest and wildlife. Safeguard forests is important factor which affects environment become the forests is important factor which affects environment because the forests maintain balance between the oxygen and carbon dioxide in the atmosphere which constitutes an important safeguard against air pollution. The Constitution (42nd Amendment) Act, 1976 was a turning point and gave the center also the power to legislate on forest\textsuperscript{14}.

Parliament has imposed a new Constitutional obligation on the State by incorporating Article 48-A in the Constitution.

Article 51-A (g) specifically deals with the Fundamental Duty with respect to environment. Article 51-A (g) postulates fundamental duty on all citizens to preserve and protect the environment and have compassion to all living creatures.

As regards the Indian Constitution, it is submitted that there was no need to incorporate a separate chapter on fundamental duties because limitations on the fundamental rights and the provisions of detailed directive principles are sufficient in this direction. Article 51-A (g) uses the words Natural Environment but in the modern industrialized civilization such a concept is misnomer. Today the polluted environment has taken the place of natural environment which has become a part of life.

Clause (g) Article 51-A provides for protection and improvement of environment and it specifically puts stress on water pollution by including matters, viz. forests, lakes, rivers, etc. But it should not mean that other pollutions like noise do not cause any concern. The level of noise pollution in big cities like Bombay, Calcutta, Delhi and Madras is not lower than cities like London and New York. Noise pollution is responsible for hypertension, fatigue, deafness, allergies, loss of sleep, loss of agency, loss in expiration of life. It makes a man irritated and neurotic. It has even damaged human fetus. Thus it is a slow agent of death.

Therefore, the Constitution makes two-fold provisions. On the one hand, it gives directive to the State for the protection and improvement of
environment and on the other, it casts a duty on every citizen to help in the preservation of natural environment. These provisions are indicative of the Government's awareness of a contemporary problem and of the need for providing a Constitutional base for further action at the national, State and local levels. When these provisions came up for consideration, in both houses of the Parliament, a general concern expressed by a cross-section of members about the deteriorating environment. In this regard Mrs. Indira Gandhi, the then Prime Ministers of India, said:

"Some people still consider concern for the environment an expensive and perhaps unnecessary luxury. But the preservation of the environment is an economic consideration since it is closely related to the depletion, restoration and increase of resources. In any policy decision and its implementation we must balance present gains with likely damage in the not too distant future. "On the contrary, if forests are better looked after and wildlife is preserved, there would be far greater opportunities for employment as well as a better ecological balance in the whole area, which would lead, to an important in the life of the tribal. So far, the feeling of responsibility towards nature was absent all over the world. It was not absent in our own ancient books; but came about because we adopted the western viewpoint. Now the time has come to go back to the source of strength of the human race and to try to preserve and revitalize them."

Our Constitution of India has, through fundamental rights and duties, made preservation and protection of the environment mandatory. For this purpose Art 21 of the Constitution is worth to report.

Article 21 guarantees the right to life, a life of dignity, to be lived in a proper environment, free of danger of disease and infection. The Supreme Court through its wisdom and activism has expanded this right and it is hoped that a day would come soon when it may declare environmental pollution, dangerous to life, as violation of Article 21 of the Constitution.

Our judicial system has been described as slow and costly. It is finished product of great beauty, but entails an immense sacrifice of time, money and talent. It gives justice only when the parties can surmount substantial barriers, which it erects for most people. When the public bodies do not perform their statutory public duties and the interest of the community is jeopardized, justice process has to be set in motion to train the judicial guns. But the unfortunate reality is the people's ignorance of their rights and procedural techniques to invoke jurisdictional consciousness, Art, 21 guaranteeing right to life and personal liberty has
now been widely interpreted by the Supreme Court so as to include the right to free legal assistance. 17 Art. 39A 18 also provides that

"The State shall secure that the operation of the legal system promotes justice on the basis of equal opportunity and shall in particular provide free legal aid by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities".

So free legal aid should be provided to the suffering people to enforce their rights. Legal Aid Programme in its wider connotation has a positive effective role to play. Legal aid clinics/bodies should educate the people about their rights and duties and remedial process to achieve the goal of protecting and improving environment by preventing pollution. These bodies should also take up the issues of advice and assistance for exercise of powers by courts. It will go a long way in the ultimate success of environmental protection and improvement campaign and in making the rights and duties of the people to live in and keep unpolluted environment a reality, which is so essential for a happy life.

CONSTITUTIONALITY OF ENVIRONMENT LEGISLATION

The 42nd Amendment to the Indian Constitution also made certain changes in the Seventh Schedule to the Constitution. Originally forests were subject included in list II, Entry 19. Since no uniform policy was being followed by the State in respect of protection of forests, now this subject has been transferred to List III and hence, now the Parliament and State Legislature both may pass legislations. Protection of wild animals and birds has also been transferred from List II, Entry 20 to List III, Entry 17-B. 42nd Amendment Act for the first time inserted Entry 20-A in List III which deals with population control and family planning because enormous increase in population is main cause for environmental problems.

Neither the constituent Assembly nor the Constitution gives any specific place to either the environment or environmental pollution in the distribution of legislative powers under the Seventh Schedule Parliament, realizing its inability and different approaches of states requested some states to move under Article 252. Article 252 says that if it appears to the legislature of two or more states to be desirable that Parliament may pass
law on the subjects and if the State legislature passes resolution to the effect then parliament may pass law on the subject. This Article further allows other states by resolution to adopt parliamentary legislation.

Art 252(1) renders it possible for the Parliament to enact such laws relating to State subjects by their consents as are necessary in the State list to cater to the need of the society in respect of public health, agriculture, forest and fisheries and which require common legislation for two or more State. The Supreme Court of India observed in Krishna v. Land Tribunal\textsuperscript{19} and Vankaiah v. State of A.P.\textsuperscript{20} that passing of the resolutions by the two more States is a condition precedent for vesting the power in Parliament. The Supreme Court also observed in Union of India v. Basavaiah\textsuperscript{21}; R.M.D.C. v State of Mysore\textsuperscript{22}; Rangayya v. State\textsuperscript{23}, and Venkatraman. v. Controller of Estate Duty\textsuperscript{24} that even after the enactment of an act by the Parliament under Art 252 (1), it is open to any of the other States to adopt the Act for such state by merely passing the resolution to that effect in its Legislature. But the operation of the Act in such state can not be from any date earlier than the date of the resolution passed in its Legislature. When a resolution is passed under the Art 252 (1), conferring a Legislative power upon Parliament, the latter would be competent to make a law relating to any subject within that power irrespective of any subject having been mentioned in the resolution of the legislature. When only a distinct and separate part of a State Entry is transferred by resolutions, the State Legislature does not lose its power to legislate with respect to the rest of the Entries.

Under Article 253 of the Constitution Parliament was conferred with the power to make any law for implementing any treaty, agreement or convention with any other country or countries or even any decision made at any International conference. The broad language of Article 253 suggests that in the wake of Stockholm Conference of 1972, Parliament has power to legislate on all matters linked to the preservation of natural resources.

The Supreme Court of India has remarked in Rangayya v. State\textsuperscript{25} that the provisions of Art. 254 may not be attracted, in terms, to a law made by Parliament under Art. 252 but the same principle should
apply by reason of the words and any such Act so passed shall apply to such states in Art. 252 (1) and the bar to its amendments or repeal by any State Legislature under Art. 252 (2). In the result, in case of conflict between a law made by Parliament under Art. 252 and the Legislature of any State to which such Central Act applies, the latter shall prevail. However, in case of repugnancy the doctrine of severability shall apply and only that portion of the State law shall give way which is repugnant.

The question of repugnancy of any state law arises in connection with the subject enumerated in the concurrent list III of 7th Schedule. In respect of this both the Union and the State Legislature have concurrent powers so that the question of conflict between the laws made by both Legislatures in connection to the same subject necessarily arises. Article 254 (1) spells out that if a State law encroaches to Union law the State law shall to that extent be void.

For Union Control over the States to ensure a harmonious progress of the country, there are advisory agencies such as Planning Commission which co-ordinate the State policies and eliminate differences between the States. The role of Planning Commission is significantly important in the issues that are facing India at present in environment protection. The Planning Commission is an extra Constitutional and non statutory body to formulate an integrated Five Year Plan for economic and social developments and to carry out functions in advisory capacity. It derives its legislative power from Entry 20 of List III in concurrent list.

The function of the Planning Commission is to prepare a plan for effective and balanced utilization of the natural resources of the country to initiate a process of development which will raise the standard of living of Indian citizens. As far as the States are concerned the role of Planning Commission is only advisory and the Planning Commission has no direct means to secure the implementation of the plan. The working of Planning Commission has led to the setting up of an extra Constitutional and extra legal body viz. National Development Council as an adjunct to the Planning Commission to associate the States in the formulation of the Five Year Plan and strengthen and mobilize the natural resources of the nation.
The Union and States derived their authority from the Indian Constitution which divides legislative, executive and financial powers between them. The judicial powers are not divided and there is a common judiciary for the Union and State consequently the States are not delegates of Union though there are agencies for union Control over the States. Art, 246 is significantly important as it deals with the distribution of legislative powers between the Union and State Legislature in the context of the different lists in the She. VII. The Union Parliament has exclusive power to legislate in respect of matters in List 1 and has also power to legislate of matters in List III. The State Legislature has exclusive power to legislate in respect of matters in List II without matters falling in List 1 and III and the State has concurrent power in respect of matters in List III.

In the context of Environmental laws Entry 17-A has been put in concurrent list transferred from Entry 19 of List II to the Constitution (42nd Amendment) Act, 1976. It is an important aspect as it encompasses forest produce in its natural state living in the State such as trees with fruits, shrubs, blussers, pastures and mines and quarries embedded in the earth with their produce locked up in the land and stray animals living in the forest and land included in the forest. Any forest produce which is separated from its place of origin by the intervention of human agencies it will continue to be part of the forest if such produce lies in the forest in its primary state. It will cease to be the part of the forest as it loses its primary state. Entry 17-B has been transferred from Entry 20 of List II to concurrent list by 42nd Amendment Act 1976, which focuses on protection of wild animals and birds.

From the above legal aspects it will be seen that it is a complex task to establish a comprehensive system of laws to control the environmental threats. Both civil and criminal laws are important to preserve the natural resources and protect the environment and Central and State Governments have overlapping responsibilities. The intervention of the courts becomes necessary when there is a potential conflict and relying on the interpretations and the precedents the courts have to draw the conclusions. The Constitutions of various countries attempt to protect individual rights in environmental problems. There are also cases in which
infringement on Constitutional freedoms is involved and claims have arisen in the areas of environmental protection. The legal structure and law making function of the government and the judicial function have special considerations in the context of handling the problems of pollution.

In the entire debate one finds hardly any specific reference of balancing ecosystem with the development process. There were provisions which may be said to have relation with environment. The fundamental right to carry on any trade or business or to hold property or the right to property may seem to be an antithesis to maintain the natural environment. But the State had the power to balance them in the public interest.

The issue of environment and development did not receive any significant recognition in the planning process till 1968. The year 1972 marks a watershed in the history of environmental management in India. Prior to 1972 environmental concerns such as sewage disposal sanitation and public health were dealt with by different ministries of the Government of India and each pursued these objective without any proper coordination system established at the federal or the inter-state level.

In pursuance of 24th U.N. General Assembly on Human Environment in 1972, India set up a committee on Human Environment under the Chairmanship of Shri Pitambar Pant, member of the Planning Commission to prepare the reports on the 'State of the environment'. These reports indicated the need for establishing greater coordination and integration in environmental policies and programme. So in February 1972, Nation Committee on Environmental Planning (NCEPC) was established in the Department of Science and Technology. The NCEPC was an apex advisory body in all mutters relating to environmental protection and improvement.

The fourth Five Year Plan made the following observations:

"Planning for harmonious development.... is possible only on the basis of comprehensive appraisal of environmental issues.... It is necessary therefore to introduce the environmental aspects into our planning and Development."
The Draft Fifth Plan (1974-79) stressed that there should be close association of the NCEPC with all major industrial decisions so that the environmental goals are fully taken into account.

In the sixth Five Year Plan (1980-85), a full chapter on "Environment and Development" has been included that emphasizes sound environmental and ecological principles in land use, agriculture, forestry, wildlife, water, air, marine development.

Until the Fifth General Election of 1977 none of the political parties in India considered environmental problems worthy of inclusion in their election manifesto, since then a number of environmental controversies, viz. sullen Valley, Mathura Refinery and acid rains have raised public concern. Gradually environmental problems are acquiring statues.

After January 1980, in General Election, Congress I came into power, and immediately set up a committee chaired by N.D. Tiwari to recommend legislative measure and administrative machinery to ensure environmental protection. It recommended the creation of a department of Environmental at the Centre that could explicitly recognize pivotal role of environmental conservation in sustainable national development.

On the basis of the recommendations of Tiwari Committee, a separate, Department of Environment was established on November 1, 1980. Also on the recommendation of the Tiwari Committee the NCEPC was replaced by a National Committee on Environmental Planning (NCEP) similar to its predecessor.

The NCEP was formed in April, 1980 with authority to prepare an annual 'State of Environment' report to arrange public hearing conferences on significant environmental issues and to establish a nation wide, Environmental Information and Communication system to propagate environmental awareness through mass media. Since these duties, in addition to its management functions, overlap in some respects with Department of Environment, there is the possibility of one agency being relegated to a subservient role.
CONSTITUTIONALITY OF WATER POLLUTION

As per Article 47 of the Indian Constitution, State's responsibility is not only to prevent and control the environmental pollution but to improve the environment is also its duty. State Governments have powers to prohibit all those activities which pollute the environment in such ways which affect public health and life adversely. In the present era of growing industrialization, scientific and technological complexities have made the task of State Government of prevention and control environmental pollution more difficult.

The 42nd amendment of Indian Constitution has played wonderful role in control of environmental pollution. By sections 10 and 11 of above amendment Article 48-A and 51-A have been added in Indian Constitution. These articles define the duties of State Governments and individuals respectively. Under first ordinance it shall be the duty of State Government to protect the natural environment and in second ordinance ten fundamental duties of the people are mentioned, and one of these duties is to protect and improve the nature environment. Under Seventh schedule of Indian Constitution, State Governments have been empowered to make statutes pertaining to use and control of water, by item 17th of State list. Similarly, by item 56 of the same schedule, the Union Government has been conferred the power to frame statutes for the development and conservation of inter-state rivers in the public interest. State Government has powers to frame statutes regarding ware supply, water collection, irrigation and canals; and Union government is empowered to enact statutes for prevention and control of inter-state river water and river valleys.

With the objective to bring uniformity in statutes framed by different States for prevention and control of water pollution, the Parliament acquires power under Article 252 to frame statutes on any subject which are not in the purview of Article 249 and Article 250; provided two or more States desire so and all legislative assemblies of those States pass such resolution to frame statutes. These statutes passed the Parliament shall be binding on the states which had passed the resolution earlier and also on
those which will pass such resolution later on. The present ‘Water (Prevention and control of Pollution) Act, 1974, has been enacted under Article 252 of the Constitution.

In connection with the legislative history of the above Act, the Ministry of Health, Government of India constituted an Expert Committee for prevention and control of domestic pollution and commercial pollution in October 1962. This Expert Committee, after analyzing all aspects of the Act, recommended in its report that both State and Union Governments can frame statutes on this subject. On 7 September 1963, the Central Committee of the Local Self Government, after complete discussion on recommendations of the above Expert Committee, passed the resolution that, in order to bring uniformity in prevention and control of pollution by legal measures, the Parliament should pass a single Act encompassing statutes. Central Government passed a resolution regarding Central Statute. In December 1965, Central Government sent a circular to all State governments, requesting them to pass a resolution in this regard.

After receiving favourable reply regarding authorization for framing Central Statute, the Central Government prepared the draft of the ‘Water Pollution Prevention Act’ in December 1969; which was presented in the Rajya Sabha in August 1970 but could not be passed. Later on, this bill was handed over to the Joint Parliamentary Committee, which examined it thoroughly and made certain changes. The Joint Parliamentary Committee submitted the revised bill along with its recommendation to Parliament on November 13, 1972. It was passed by the Parliament in January 1974, and after getting the consent of the Hon, able President of India on March 23, 1974, it came into existence as ‘Water (Prevention and Control of Pollution) Act 1974.

In accordance with the provisions of clause (1) of this Article, all houses of the State Legislative Assemblies of Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal passed resolution to adopt central laws for their States. Later, under section 3 of above Act, States of Uttar Pradesh, Punjab, Andhra Pradesh, Orissa, Nagaland and
Tamil Nadu co-opted it. But Maharashtra, Manipur and Meghalaya did not show any reaction.

CONSTITUTIONALITY OF AIR LEGISLATION

Art. 47 of the Constitution, which falls under the provisions of Directive Principles of State Policy relates to public health. In this Article improvement in public health does not only mean to uplift the level of intake of food, nutrition and standard of living but also to protect public health from ill effects of unsuitable environment; in other words, to encourage environment congenial to improvement of public health.

42nd amendment of the Constitution, by adding Art 48-A in the Constitution, has played very crucial role in the field of public life and public health. Article 51-A has also been included by this Amendment Act 1976 as a new chapter Part IV-A in the Constitution. Duties of States and individuals have been elaborated in both of the articles.

Industries are growing at faster rate after industrial revolution in India but environment is totally neglected. As a result, as has been brought out by the survey reports, people in industrial zones of big cities are suffering from several diseases caused by air pollution. But unfortunately, Government is not taking air pollution as seriously as it should, in spite of the vivid provisions regarding human health in the Constitution.

The decisions of Higher Courts\textsuperscript{29} in several cases have made it clear that activities polluting environment cannot be legalized. At the same time, a person can be penalized for willfully polluting the environment under section 278 of I.P.C. The aforesaid provision is also applicable to all harmful and hazardous industries\textsuperscript{30}. Bishop has proclaimed that the human health is a fundamental base, because of which locating hazardous industry in a dense residential is considered an offence\textsuperscript{31}. In Indian Constitution, penal law and local laws there are various provisions under which rational restrictions can be imposed on location of hazardous industries. The Air (Pollution prevention and control) Act 1981 by its section 21 prohibits to establish new industry without the pre permission of the Board.
Air (Pollution prevention and control) Act 1981, which has been made effective from 16 May 1981, vide the Notification No. G.S.R. 351 (E) dated 15/51981 of the Central Government, is enacted under these Constitutional provisions. The purpose of this Act is to improve the quality of air and to solve, control and reduce air pollution by utilizing such modern techniques as suggested by the Boards (Central Pollution Control Board and State Boards) established under this Act.

CONSTITUTIONALITY OF NOISE LEGISLATION

India became one of the few countries of the world which enshrined in its Constitution a commitment to environmental protection and improvement. It has interjected a new dimension to public responsibility by obligating the Central Government to protect and improve the environment for the good of society as a whole.\textsuperscript{32} So the Constitution makes dual provision by way of directives to the State for the protection and improvement of the environment and imposing a duty on every citizen to help in the preservation of the natural environment.

In State of Rajasthan v. G.Chawala\textsuperscript{33} a unique question came up before the Supreme Court whether the State Legislature has the right to prevent and control loud noise and make it punishable? Do such restrictions or State enactments amount to violation of the freedom of speech for prevention and control of noises? The Supreme Court is of the opinion that this freedom is not absolute. It is subject to the restrictions provided under Article 19(2). This clause (2) of Article 19 provides certain reasonable restrictions which can be put on the freedom of speech and expression. Thus if any law pre-Constitutional or post-Constitutional, imposes reasonable restrictions in the interest of public order, it is Constitutional. In this case the Aided (Sound Amplifier Control) Act.1952 was challenged as violative of the freedom of speech and expression and that the State Government had no power under the Constitution to enact such laws.

The Supreme Court has declared that the said Act is not unconstitutional as it is a reasonable restriction in the interest of public order and the State is also empowered to enact such laws. To make things
more clear it was observed by the court that the State can make laws in the exercise of its power under Entry Public Health and Sanitation of List II provided under Seventh Schedule. Thus the States have the right to control loud noises when the rights of such user in disregard to the comfort and obligations to others, emerges as manifest nuisance to them. Thus laws to control loud noises and music enacted by various States\(^{34}\) are within the permissible limits of the Constitution and are a reasonable restriction on the freedom of speech and expression. The Court made it clear that persons are free to make noise but not to disturb the rights of others of living peacefully. As soon as the noise becomes a nuisance, interferes in the use of enjoyment of property or annoys others, the laws imposing restriction will come into operation and the Constitutional freedom will also come to an end. Such noise may also become a health hazard activity. Such activity is also violative of the Constitutional duty imposed on every citizen of India under Article 51-A to protect and improve the natural environment.

As far as Article 48A and Article 51-A (g) of the Constitution are concerned, the former uses the expression "environment" and the latter uses the expression "natural environment". It seems to be that the difference is only in form and not in substance. No doubt, the part IV is not judicially enforceable but according to Article 31-C no law giving effect to the policy of the State towards securing the principles specified in Clause (b) or Clause (c) of Article 39 of the Constitution shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges, any of the fundamental rights conferred by Article 14 on equality before law or Article 19 on protection of certain rights to freedom.

Art, 31-C was inserted by the 25th Constitutional Amendment Act 1971 to overcome the difficulties met with giving effect to the judicial decisions in pursuance of the Directive Principles enshrined in Part IV of the Constitution of India. As observed by the Supreme Court in Keshavananda v. State of Kerala\(^{35}\), Art. 39(b) and (c) contain provisions of the Constitution with the main object of building of a welfare State and social order holding the principles of equality of citizens and to determine social and economic goals for immediate achievement by bringing about a
non-violent and social revolution for which the Constitution seeks to fulfill
the basic requirements of the common man and to change the structure of
the society without which the political democracy is meaningless. This was
a bold decision in the direction of bringing about the changes to preserve
the environment and the natural resources for the protection of human life.
The Supreme Court also observed in this case that the Directive Principles
cannot directly override the Fundamental Rights and without implementing
the Directives the condition for enjoyment of Fundamental Rights by all
cannot be created. The Constitution has been amended many times
culminating to the insertion of Art. 31-C to ensure that the implementation
of Art. 39(b) and (c) cannot be blocked by the guarantee of Fundamental
Rights.

As a result of the Supreme Court's decision in Keshavananda's case
the Parliament carried out an amendment to Art. 31-C vide 42nd
Amendment Act, 1976, by which the protection of Art. 31-C was further
extended to all the directives contained in Part IV of the Constitution in
place of Art. 39(b) and (c) and a formal change were made by deleting
reference to Art. 31 since that Article deleted by the said amendment. As
decided in Minerva Mills v. Union of India36 with regard to the second part
of the Art. 31-C which was held to be unconstitutional in Keshavananda's
case, it was not deleted from the official text of the Constitution as later
cases seem to restrict the scope of judicial review of the statutory
declaration only to the narrow question whether there is a reasonable
nexus between the act passed and the objective of the directive sought to
be implemented. The decisions of the majority in Minerva Mills case that
amendment of 1976 which extended to shield the provisions of Art. 31-C to
all the Directives included in Part IV was unconstitutional and Art. 31-C
confined to its pre 1976 position of protecting only laws which were aimed
at implementation of Art. 39(b) and (c) has not been overruled by the larger
Bench.

The decisions in Keshavananda's case are voluminous and divergent
but the conclusions emerged from the judgment of the majority of Judges
in relation to Art. 31-C is same as pronounced in the State of T.N. v. Abu37
and Minerva Mills v. Union of India38 as under:
1. The first part of Art. 31-C being valid if a law fulfills the requirements of Article 31-C, it would be immune from attack on ground to contravention of Arts. 14 and 19 as decided in Venkatarao v. State\textsuperscript{39} and M. Asghar v. Union of India\textsuperscript{40}.

2. As decided in Tinsukhia V. State of Assam\textsuperscript{41} the second part of Art. 31-C is invalid because it seeks to take away Court's power of judicial review that is an essential feature of the Constitution of India.

As a result when the protection of Art. 31-C is sought to shield a particular enactment the Court would be entitled to examine whether the impugned enactment really seeks to give effect to the policy underlined in Art. 39(b) and (c) irrespective of any declaration having been made by the Legislature, which made that enactment.\textsuperscript{42} However, as a result of examination the impugned law it is found that to give effect to the policy under Art. 39(b) and (c) it will be immune from attack on the ground of contravention of Arts. 14 and 19\textsuperscript{42}(A). On the other hand if it is found not to relate Art. 39(b) and (c) it will be open to challenge under the provisions of Art. 14 and 19\textsuperscript{43}.

**RIGHT TO LIVE WITH HEALTHY ENVIRONMENT**

The liberal interpretations of the words life and liberty have invoked a residuary right to an extent not contemplated by the framers of the Constitution or the judges who gave it the initial gloss. Petitions of Public Interest Litigation (PIL) are based on the expanded interpretations of Art. 21, which is very wide to cover the larger areas but for the purpose of this work the researcher only cites cases relating to health hazards caused by the environment as under.

1. Children in jail entitled to special treatment\textsuperscript{44}
2. Health hazards due to pollution\textsuperscript{45}
3. Beggars interest in housing\textsuperscript{46}
4. Health hazards from harmful drugs\textsuperscript{47}
5. Right to speedy trial\textsuperscript{48}
6. Handcuffing of prisoners\textsuperscript{49}
7. Delay in execution of death sentence\textsuperscript{50}
8. Immediate medical aid to injured persons\textsuperscript{51}
9. Starvation deaths\textsuperscript{52}
10. The right to know\textsuperscript{53}
11. Right to open trial\textsuperscript{54}
12. Inhuman conditions in aftercare home\textsuperscript{55}
A significant aspect of the expansion of the interpretations of Art. 21 is seen in the following decisions:

1. Right to pollution free water and air
2. Right to a reasonable residence
3. Right to food, clothing, decent environment and protection of cultural heritage
4. Right of every child to a full development
5. Right of residents of hilly areas to access to roads
6. Right to education

The negative language of Art. 21 and the use of the word 'deprived of' would impose upon the State a negative duty not to interfere with the life and liberty of a citizen without legal sanction. A significant development is seen in the approach of the Judges by imposing a positive obligation upon the State to ensure better enjoyment of life and dignity by a citizen in respect of maintenance and improvement of public health standards, elimination of water and air pollution, improvement of means of communications. These decisions have expanded the horizons of the pollution control activities and have added a new dimension to the environmental laws. A new approach is noticed in decisions of the Supreme Court that when Constitutionality of a statute is challenged as arbitrary or unreasonable the Court applies the test of validity and interrelation of Arts. 14, 19 and 21 read together.

An important feature of Right to Breath, which is a component of Right to Life, is that it is not subjected to any reasonable restriction unlike those enshrined in Art. 19(1) clauses (a) to (g) in Part III of the Constitution. The Parliament has residuary power to impose reasonable restrictions on the fundamental rights, which is subject to social control. Exercise of such power is in the interest of public safety, decency and morals and no citizen would be allowed to stretch the exercise of his right to a conduct which would be reasonably said to be mischievous, illegal or improper. The State can in such instance place restrictions and impose criminal or civil liability upon such citizen if the excess of any of his freedoms involved, activities which tend to become obscene, contemptuous, seditious, indecent, blasphemous or scandalous.

Right to Life when read with right to equality is not thus subjected to any restrictions. Right to Breath means inhaling clean air and not to breathe filth as the medical reports show that the incidents of respiratory
diseases in metropolitan cities have increased considerably that the national average. The mixture of virulent gases in the atmosphere cause irritation to lungs and wind pipes and help in increasing the viral infections. The quality of coal used in power houses is inferior and in absence of installation of electrostatic precipitators, the pollutants from power houses, fertilizer and chemical plants have created serious breathing problems in the nearby localities. The exhaust gases emitting from vehicles have also contributed to the air pollution and the degree of concentration which changes according to temperature in the atmosphere have aggravated the problems of contamination and pollution of air and water. As a result of increased awareness the Government of India has established a Ministry of Environment and enacted the Water (Prevention and Control of Pollution) Act 1974 and Air (Prevention and Control of Pollution) Act, 1981 which is a progressive step in the direction of recognition of the right to breath.

The new approach is expanding the interpretations of Art. 21 relates to the phenomenon of leading a dignified life than just to live a life. Man has proceeded to widen his horizon to identify himself with the nature and universe as philosophical approach of life shows fullness of reality and this evolution exhibits a system which regulates both inner and outer life of man.

In Ratlam Municipality v. Vardichand the Court enforced the duty against defaulting local authorities irrespective of the insufficient financial resources of such authority. The Court further directed the local authorities to approach the State Government for loan or aid whenever required, as the improvement to public health is the duty of the State.67

Right to Breath is guaranteed by protection and improvement of the environment and safeguarding forests and wild life as spelt out vide Art. 48-A of the Constitution (Forty Second Amendment) Act. 1976. The Supreme Court stressed the importance of this right by protection of environment and when read with Arts. 51-A (g) 14 and 21 the following conclusions were drawn by the Supreme Court in Subhash v. State of Bihar, Satish v. State of U.P. and Tarun v. Union of India. 71
(a) It is a Constitutional duty not only of the State but also of every citizen to protect and improve the environment and natural resources of the country.

(b) Though neither Art, 45-A nor Art 51-A is judicially enforceable by itself, it becomes enforceable through the expanded interpretations of Art. 21, so that in case of a failure of the foregoing duties, the Supreme Court under Article 32 the High Court under Article 226 would entertain as public interest litigation brought by any individual or institution in the locality or any social action group even by a letter with an affidavit to that effect. However, the Court\textsuperscript{72} suggested a cautious approach to the Public Interest Litigation (PIL).

In order that a citizen may not ignore his duties towards the society in exercising his fundamental rights or destroy public property or the natural resources, the recommendations of the Swaran Singh Committee were considered and Constitution (Forty Second Amendment) Act, 1976 emphasized on protection and improvement to the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. In Chandra Bhavan v. State of Mysore\textsuperscript{73} the Supreme Court observed:

"It is a fallacy to think that under our Constitution there are only rights and no duties. The provisions in Part IV enable the Legislatures to impose various duties on the citizens. The mandate of our Constitution is to build a welfare society and that object may be achieved to the extent the directive principles are implemented by legislation."

In view of the duty imposed on the citizens to improve the environment, a Division Bench of Supreme Court observed in Mehta v. Union of India.\textsuperscript{74}

"It is the duty of the Central Government to take appropriate steps in the direction to make this provision effective and directed the Central Government -

(a) To direct all educational institutions throughout India to give weekly lessons in the first ten classes, relating to the protection and improvement of the natural environment including forests, lakes, rivers and wild life.

(b) To get textbooks written for the said purpose and to distribute them free of cost.

(c) To introduce short term courses for training up teachers who teach this subject.

(d) Not only the Central Government but also the State Governments and local Authorities to introduce cleanliness weeks when all citizens, including members of the Executive, the Legislature and the Judiciary, should render free personal
service to keep their local areas free from pollution of land, water and air".

It will be seen from the above cases that the Supreme Court has taken bold steps in the direction of improvement of the environment and protection and preservation of the natural resources. The changing pattern of right to life as enshrined in Article 21 stresses more on the phenomenon of leading a life than just to live a life.

A Writ Petition can be moved by an aggrieved individual and public spirited individual or the social action group to enforce the Constitutional rights of other persons who are victims of any violation of Constitutional or legal rights provided such persons are not able to approach the court for redress. Such an individual is not able to approach due to following circumstances.

1. Such an individual being in custody,

2. Such person belongs to a group having a disadvantaged position due to disability or poverty or some social or economical handicaps and therefore unable to enforce the rights.

The Supreme Court observed in Gupta v. Union of India\textsuperscript{75} and Banwasi v. State of U.P.\textsuperscript{76} that where no particular person has been legally injured but public injury has been caused by the violation of Constitutional principles, any person who is likely to be affected by such public injury, such as a lawyer would be allowed to complain of such a violation.

The grievance in an action of Public Interest Litigation (PIL) is the conduct of government action with regard to the preservation of statutory rights or Constitutional rights of society and in certain circumstances the conduct of the policy of government. The Supreme Court observed in Sheela Barse v. Union of India\textsuperscript{77} that the relief to be granted looks to the future and is corrective rather than compensatory. The court has a more dynamic role, as it often seeks the assistance of an expert panel, commissioners and advisory committees. The relief implies an affirmative action and the remedy imposed is negotiated or quasi-negotiated.

The Supreme Court also observed in Rural Litigation v. State of U.P.\textsuperscript{78} that Public Interest Litigation is an instrument for the administration of justice and to be used properly in appropriate cases, PIL.
does not mean settling dispute between individual parties. The Supreme Court remarked in Ramsharan v. Union of India\textsuperscript{79} that it is only when courts are apprised of a gross violation of fundamental rights by a group or a class action or when basic Human Rights are invaded or when there are complaint of such acts shocked the judicial conscience that the Supreme Court should leave aside procedural shackles and hear such petitions for remediying the hardships and miseries of the needy and underdog and the neglected.

In Subhash v. State of Bihar\textsuperscript{80} the Supreme Court observed that the expression "Public Interest" is the anti-thesis of private or self interest as it contemplates a legal proceeding for the vindication of the fundamental rights of persons who are not able to enforce them on account of their incapacity, poverty and brought by some persons or an organization genuinely interested in the protection of the society. The Court should therefore encourage by avoiding heavy cost where the petitioner seeks to vindicate personal interest, grudge or animete in the garb of PIL. The Supreme Court observed in Bholenath v. State of U.P. \textsuperscript{81} that it is not an advisory litigation to hold the State or its officer responsible for reparation. On the other hand PIL involved cooperation between the government and its officers, the Bar and the Bench for the purpose of making human rights meaningful for the weaker sections of the community.

As the Supreme Court is not bound by the technicalities of an adversarial procedure it may make order to enforce the basic human rights in an effective manner. The Supreme Court remarked in Bandhua Morcha v. Union of India\textsuperscript{82} and Bholenath v. State of U.P. \textsuperscript{83} that the court may direct an inquiry without determining the Respondents preliminary objection that no fundamental rights have been affected. The court may issue directions of any nature to meet the problem brought before the court. The court may award compensation.

However, Maharshi v. State\textsuperscript{84}, Gupta v. President of India\textsuperscript{85}, State of H.P. v. Parent\textsuperscript{86} and Sachidanand v. State of West Bengal \textsuperscript{87} the Supreme Court has cautioned that while transferring a case from one High Court to another the Court should bear the following limitations in mind.

1. Under the guise of redressing a public grievance, the Court cannot encroach upon the sphere reserved by the Constitution. the
Executive and the Legislature or to meddle in matter, which are entirely political.

2. It is only when a public injury which affect the public in general, apart from causing a specific legal injury to an individual or a specific class of individuals, that a member of the public, who is also generally interested, may be allowed to bring a PIL on behalf of those who are directly or primarily affected by the public injury.

3. Where the Petitioner seeks any relief to serve his self interest, apart from that of the community, that relief would be refused.\textsuperscript{88} When the Petitioner has no interest at all n the matter, he cannot bring a PIL on behalf of those who are affected and where the statutory stage carriage permits are issued to the transport operators individually, their Union cannot bring PIL challenging the order of the statutory authority.\textsuperscript{89}

4. PIL should not be allowed to be misused for vindicating enmity or rivalry.\textsuperscript{90}

The Supreme Court framed an interim relief scheme and directed the Madhya Pradesh Government to implement the same in Ghopal Gas Peedit v. Union of India.\textsuperscript{91} In Mehta (II) v. Union of India\textsuperscript{92} and Subhash v. State of Bihar\textsuperscript{93} the Supreme Court directed the municipalities to submit proposals for effective control and prevention of water pollution to the board constituted under the Water (Prevention and Control of Pollution) Act, 1974.

The Supreme Court evolved the extraordinary jurisdiction as enshrined in Art. 32 for enforcing the fundamental rights where there was violation and the doctrine of Public Interest Litigation which was formulated in a comprehensive form by the Supreme Court in Gupta v. Union of India.\textsuperscript{94} This doctrine applied to the cases in which public injury arising from:

1. The breach of any public duty or
2. The violation of some provision of the Constitution or of the law.

The Supreme Court applied this doctrine for enforcing fundamental rights under Art. 32 and the High Courts also applied the same in their jurisdiction under Article 226 for enforcing fundamental rights and restraining the executives from undermining the public interest.\textsuperscript{95}

In the cases of public interest litigation as the dispute is not inter party, the approach of the court is not generally technical. Where a civil miscellaneous petition was filed the same was entertained by the court even though the procedure specified a review petition. For Public Interest
Litigation procedural laws do not apply, as every technicality in the procedural law may not be available as a defense, when a matter of grave public importance is for consideration before the court the court may not entertain the plea of res judi cata. These decisions have provided a strong tool to the pollution control efforts.

The continued degradation of the human environment is the gift of modern living, technological advancement, industrialization and urbanization. The economic development now enjoyed by the developed States was sometimes achieved without due regard to the preservation of the environment. The irony of the situation is that the more the economic and industrial development in the world, the more the danger to the environment. Every industry has some wares to dispose of. In the process of manufacturing there arises a solid, liquid and gaseous waste. The gases are let off through chimneys and the others are thrown into nearby water sources like sea, rivers, lakes and ponds. Because of industrial wastes in the form of effluent being emptied into neighboring water sources, many a rivers have become blue, green, red and violet. Pollution of the water courses is so hitch that person falling in the river might not die of drowning if he is saved, but he is bound to die of poisoning, for a drowning man gulps the polluted water. Industries are thus the biggest source of environmental pollution. How the industries dispose of their waste determines the amount and kind of pollution. Unplanned industrial companies make the city literally a modern gas chamber, where people are made to forget even the fragrance of the fresh air.

Oceans are being polluted by oil spills, dumping of the refuse and introduction of chlorinated hydrocarbons, which come from different types of human activity. The discharge of toxic substances and untreated sewers into streams and rivers has found their way into the sea, thus, further compounding the problem of pollution. Pollution of the oceans has affected the marine life, which has resulted in the extinction of some species. The use of fertilizers and certain pest control chemicals, including D.D.T. have brought about damage to the environment. Plants and animals absorb these agricultural chemicals, which eventually end up in human stomach.
This planet, with its whole eco-system, took many million of years to develop into its present form. The reproduction of its various components at favorable rates helps it in maintaining the delicate balance of its eco-system. However, introduction of large amounts of pollutants into the biosphere can upset this delicate balance thereby causing danger to the very existence of human race. Introduction of large amounts of pollutants has been found to affect climate conditions. This climatic change as resulted in negative consequences, such as those associated with floods, or prolonged droughts and deforestation, as can be witnessed at present on the continent of Africa. As a result, famine has affected large number of people. Environmental pollution is also equally responsible for sudden outbreaks of diseases, such as cholera and measles. It has been proved that more and more pollutants in the air have caused an increase in the number of incidents of such disease such as lungs infections, coronary ailments and stomach cancer. Water and atmospheric contamination with various toxic substances, such as toxic metals: with chemicals, such as lead, mercury, arsenic, cadmium and sulphur; and with nuclear fall-out resulting from nuclear testing, pose great danger to human health. So, environmental pollution is a dragon that hovers over the cities. Under its spell people suffer various sicknesses and die prematurely.

The United Nations is very much conscious of the worldwide problem of maintaining the environmental safe form human beings and has prepared charters for the environmental management from time to time.

MAINTENANCE OF ECOSYSTEM

Scientists in the environmental field believe that only short term impacts and economic factors have influenced the important political decisions and no attention is paid towards the maintenance of ecosystems. A study of the relationship of the living organisms and the environment has revealed that the plants absorb the solar energy which flows through a biota circuit which is in the form of layers of pyramid. The layers consist of soil at the bottom on which pyramid of layers of plant, insects, birds and animal groups at the top. Thus land is not merely a soil but a fountainhead of energy which flows through the various layers of plants, insects, birds
and animal kingdom. The chains of food are the living channels that conduct energy upwards and decay and death return the energy back to the soil. When any change takes place in any layer of the pyramid, the other layers also respond to the change. The scientists believe that man has now the capacity to disturb the above cycle. However, they are afraid to the responses of the whole cycle due to changes made by man with the sophisticated technology available to him. The scientists, therefore, warn that before one takes any step to interrupt the ecological system one has to think seriously of the consequences of unregulated actions. The environmentalists observe that man belongs to the dominant species in the ecosystem and with the knowledge and power that he possesses, a duty is cast upon him to care for the preservation of ecosystem from the survival point of his as well as the future generations as man is an insignificant part of the universe and he has no right whatsoever to destroy a significant portion of the universe to satisfy his selfish desire.

The ecological equilibrium and the environmental protection are the issues, which have reached a high level in the international awareness of clean and unpolluted air that is the basic requirement for the good health of a person. The welfare of the citizens and the industrial development are the sensitive issues, which have created conflicts as far as the environmental protection is concerned. In this context Rural Litigation and Entitlement Kendra, Dehradun v. State of U.P. 97 is an important case as it involved a number of quarries of limestone. The issues of ecological equilibrium, environmental protection and adverse impact of operation of such quarries were involved. A committee (Bhargave Committee) was appointed by the Supreme Court to submit an environment impact assessment report on working of limestone quarries and as a result of recommendation, the Supreme Court while affirming the closure of the quarries observed that the closure is a price that has to be paid for protecting and safeguarding the right of the people to live in a healthy environment and minimal disturbance of ecological balance and without avoidable hazards to them and to their cattle, homes and agricultural land and purity of air, water and environment.
The important issues of re-location and installation of sufficient safety devices were discussed exhaustively in M.C. Mehta v. Union of India\textsuperscript{98} in which case the leakage of MIC gas from the Union Carbide Factory at Bhopal and the extent of liability of such Corporation on account of negligence and remedies devised for enforcing such liability to secure payment of damages to the victims of leakage. The Supreme Court directed that:

1. A High Power Authority should be set up by the Government of India in consultation with the Central Board for supervising the functioning of hazardous industries with a view to ensure that there are no defects or deficiencies in the design, structure or quality of their plant and machinery, there is no negligence in maintenance and operation of the plant and equipment and necessary safety devices and instruments are installed and are in operation and proper and adequate safety standards and procedures are strictly followed:

2. The Government of India should set up an Ecological Science Research Group consisting of independent and professionally competent experts in different branches of science and technology, who would act as an information bank for the Court and the Government departments to generate new information according to the particular requirements of the Court or the concerned Government departments; and

3. Since cases involving issues of environmental pollution, ecological destruction and conflicts over natural resources are increasingly coming up for adjudication and these cases involve assessment and evolution of scientific and technical data, it might be desirable to set up environmental courts on the regional basis with one professional Judge and two experts drawn from the Ecological Science Research Group keeping in view the nature of case and the expertise required for its adjudication.

\textbf{THE DOCTRINE OF PUBLIC TRUST}

To ensure better quality of environment the government is looked upon as a trustee of the Public Trust as the concept of Public Trust of common properties such as rivers, seas, forest and air is traced in the early Roman Law. This doctrine was also applied in England to give ownership of
public lands to the King and his subjects were given access to waterways for commerce and fishing. The doctrine of Public Trust is also followed in the United States of America primarily for sea shores, rivers and natural areas and has been adopted on a somewhat piecemeal basic. The U.S. Supreme Court while affirming nation's title to the land observed:

"It is a title that is held in trust for the people of the State that they may enjoy the navigation of the waters, carry on commerce over them and have the liberty of fishing therein, free from the obstruction or interference of private parties....

"The control of the State for purpose of the trust can never be lost, except as to such parcels as are used in promoting the interests of the public therein, or can be disposed of without any substantial impairment of the public interest in the lands and waters remaining."

In the context of public rights and duties in respect of conservation of natural resources, the doctrine of Public Trust is a significant one though Constitutional guarantees would have an upper hand over this doctrine. A balance has to be struck between the interest of the citizens and the amount of short-term use of the trusted properties for public welfare projects. This policy is well reflected in the Amendments carried out from time to time to the Indian Constitution.

CONCLUSIONS

The Constitution of India as originally adopted did not contain any specific provision for protection of environment. In fact, it contained only a few Directives to the State on some aspects relating to public health, agriculture and animal husbandry. These Directives are not judicially enforceable. But in the light of Stockholm Declaration on the Human Environment, 1972, India by the Constitution (Forty-second Amendment) Act, 1976 added new provisions to give it environmental dimension. These provisions impose duties for protection and improvement of the environment both on State and citizens. For Uniform legislation, the present scheme of the Constitution empowers the Central Government to legislate laws for protection of environment even with respect to matters enumerated in the State List. Thus, Constitutional survey reveals that it contains adequate provisions for environmental protection.

Pollution is the result of modern industrialization and urbanization. Rich and literate raise cries against pollution. Poor live in polluted
atmosphere, unpolluted by the slogan of environmental protection, whether in big cities or towns or in small villages. They know neither the laws nor the campaign against the environmental pollution; they know neither their fundamental human right, nor fundamental duty, of own or of others live in the polluted environment. They only deem a privilege to live in the polluted atmosphere. Ponds of dirty water particularly in rainy season, heaps of dirt, unbuilt roads raising dust on walking, open drain manholes, cow dung heaps and public excretion by humans for want of public lavatories, dark streets at nights, deafening noise, nallah and drains carrying industrial discharge, air suffocating with smoke or industrial gases, etc., are essential part of surrounding environment for them. Lack of sense of importance of environmental protection, ignorance of procedural remedial mechanism, illiteracy—general and legal and poverty strengthen the belief of satisfaction in status quo.

These may appear to be social and economic issues but they also involve problems of access to justice for them, which are individualistic as well as community-oriented. Various legislative and administrative measures adopted by government show its serious concern for protecting environment. Judicial activism provided impetus to the campaign against pollution. Environment Activist advocates have showed the path for people's involvement in justicing process, sans which the system would crumble under the burden of its insensitivity. Judicial activism is the hope but, just as to get the butter, churning is essential, similarly, its vibration impact would not be possible so long as no-action status continues due to ignorance of procedural remedial measures.

REFERENCES

1. The Constriction (42\textsuperscript{nd} Amendment) Act, 1976 received the assent of the President of India on December, 16, 1976.

2. Articles 245 to 255 deal with legislative relations between the Centre and the States.

3. Union List I consists of 97 items.

4. The State List II consists of 66 items including public health and sanitation agriculture, water-supply, irrigation & drainage & fisheries.
5. Under Article 252 Parliament can legislate if two or more than two States consent and is adopted by legislation by other States and under Article 250 Parliament can also legislate if proclamation of Emergency is in operation.

6. Concurrent List consists of 47 items on which Parliament and State Legislatures both can make laws. But if both the laws are inconsistent, the law passed by Parliament will prevail.


8. "The state shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of the 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."

9. "The state shall endeavour to organize 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 prohibiting the slaughter, of cows and calves and other milch and draught cattle."

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

11. Art 37 of the constitution of India.

12. The state shall endeavour to protect and improve the Environment and to safeguard the forests and wild life of the country.

13. "It shall be duty of every Citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures".

14. "Seventh Schedule, list III items 17-A forest was deleted from state list and included in the concurrent list"


18. Added by the Constitution (42nd Amendment) Act, 1976.

19. AIR 1993 S.C. 883

20. AIR 1980 SC 1568

21. AIR 1979 SC 594
22. AIR 1962 SC 594
23. AIR 1978 A.P. 106 F.B.
24. AIR 1960 Mad 305
25. AIR 1978 A.P. 106
26. AIR 1941 F.C. 47
27. 1978 Bom. 119 F.B.
28. 1987 M.P. 57
33. AIR 1959 SCS 44.
34. M. P. Control of Music and Noise Act 1951.
37. T.N. V/o Abu. AIR 1949 Sc 326.
38. Mineramills V Union of India 1986 Sc 2030.
42. A.I.R. 1974 P and H 162 F.B.
42 (a) A.I.R. 1984 Sc. 326.
43. A.I.R. 1989 3 Sec. 709.
44. A.I.R. 1986 3 Scc. 596.
46. A.I.R. 1987 3 Scc. 430
55. A.I.R. 1988 Sc. 1782
56. A.I.R. 19912 Sc. 420
58. A.I.R. 1989 9 Sc. 677
59. A.I.R. 1990 2 Sc. 710
60. A.I.R. 1986 Sc. 847.
61. A.I.R. 1992 Sc. 1858
64. A.I.R. 1987 Sc. 847
65. A.I.R. 1980 Sc. 1789
66. A.I.R. 1980 Sc. 1622
68. Art 48 of the Indian Constitution.
69. A.I.R. 1991 Sc. 420
71. Ibid.
75. A.I.R. 1982 Sc. 149.
78. A.I.R. 1989 Sc. 594
79. A.I.R. 1988 Sc. 594
80. A.I.R. 1999 Sc. 420
82. A.I.R. 1984 Sc. 802
84. A.I.R. 1990 Sc. 152
85. A.I.R. 1982 Sc. 149
86. A.I.R. 1985 Sc. 910
87. A.I.R. 1987 Sc. 1109
88. A.I.R. 1992 Sc. 420
89. A.I.R. 1991 Sc. 59
90. A.I.R. 1991 Sc. 59
91. A.I.R. 1989 Sc. 1069
92. A.I.R. 1988 Sc. 115
93. A.I.R. 1991 Sc. 420
94. A.I.R. 1982 Sc. 149
95. A.I.R. 1981 Sc. 298
97. A.I.R. 1985 Sc. 652
98. A.I.R. 1998 2 Scc. 176
99. Chitnis Vijay S. Changing Face of the planet and Environmental Low, p. 66.