CHAPTER-III

CONSTITUTION OF INDIA AND GLOBAL IMPACT ON INDIAN ENVIRONMENT LEGISLATION

3.1 Environment and the Constitution of India

Originally, the Constitution of India did not contain any specific provision for the protection and promotion of the environment. However, in 1976, the Constitution (Forty-Second Amendment) Act was passed which expressly incorporated specific provisions for environmental protection and improvement in the form of Fundamental Duty and Directive principle of state policy. The forty-second amendment of the Constitution was adopted in response to the Stockholm Declaration adopted by the UN Conference on Human Environment in 1972. The Stockholm Declaration, inter alia, clarifies that man has fundamental right to freedom, equality and adequate conditions of life in an environment of quality that permits life of dignity and well-being. Accordingly, the Declaration emphasizes that man bears solemn responsibility to protect and improve the environment for present and future generations. After the 1976 amendments, the Directive principles of state policy and the Fundamental Duties chapters of the constitution of India explicitly enunciate the national commitment to protect and improve the environment.

Environmental law is an instrument to protect and improve the environment and to control or prevent any act or omission polluting or likely to pollute the environment. The decision of legislative authority has vital role to play in dealing with the environmental problems. This is due to the reason that some environmental problems like drainage, sewage, public health, etc, can be effectively dealt with at the local level whereas others like water management, forest management and wild life protection are best handled at the central level.
3.2 Environmental Legislative Machinery

The legislative relations between the Union and the States are governed by Part XI of the Constitution of India. Article 246\(^1\) of the Constitution makes division of the legislative areas between the Union and the States with reference to the three lists in the seventh schedule to the Constitution. Article 46 provides that the Parliament has the exclusive power to make laws for the whole or any part of India with respect to matters enumerated in List I (Union list) containing 97 subjects (Annexure I). List I, inter alia, includes regulation and development of oil fields, mines and mineral development and interstate rivers. Article 246 further provides that the State legislature has the exclusive power to make laws for such State or any part thereof with respect to matters enumerated in List II (State List) (Annexure II) comprising of 66 subjects. List II, inter alia, includes public health and sanitation, agriculture, water supplies, irrigation, drainage and fisheries.

Furthermore, under Article 246, both Parliament and the State legislature have the power to make laws with respect to matters enumerated in List III (Concurrent List) (Annexure III) comprising of 52 subjects which, inter alia, includes forests, protection of wild life, etc.

Article 248\(^2\) confers residuary powers on the Parliament to make laws with respect to any matter not enumerated in Concurrent list or State list. Article 254\(^3\) makes parliamentary legislation on matters provided in the Concurrent list predominant viz-a-viz State legislation. It is clarified under Article 254 that in case of conflict between Parliamentary and State legislation on a matter in the Concurrent list, Parliamentary legislation will prevail over the State legislation. However, State legislation will prevail

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\(^1\) Article 246 of the Constitution of India provides: Subject-matter of laws made by Parliament and by the Legislatures of States.

\(^2\) Article 248 of the Constitution provides Residuary powers of legislation.

\(^3\) Article 254 of the Constitution provides for: Inconsistency between laws made by Parliament and laws made by the Legislatures of States.
over Central legislation on a matter contained in the Concurrent list only if
the State legislation is passed after the Parliamentary legislation and it was
reserved for the consideration of the President and has received Presidential
assent.

Article 249\(^4\) and 250\(^5\) empower the Parliament to make laws on
matters contained in the State list if national interest so requires or if a
proclamation of emergency is in operation.

Moreover, accordingly to Article 252\(^6\), if two or more State
legislatures consent to Central legislation on a matter contained in the State
list, it shall be lawful for the Parliament to legislate on that matter which
otherwise forms part of the State list.

Article 253\(^7\) enables Parliament to make laws for implementation of
international treaties, conventions, or decisions taken at the international
conferences. Accordingly, the Water (Prevention and Control of Pollution)
Act was enacted in 1974.

1. to implement decisions taken at the Stockholm Conference;
2. at the behest of resolutions passed by 12 State legislatures
   consenting to parliamentary legislation to this effect.

Likewise, Air (Prevention and Control of Pollution) Act, 1981, and
the Environment (Protection), Act, 1986, were passed by the Parliament
under Article 253 of the Constitution of India.

3.3 Constitutional Status of Environment

Pollution bends, twists, tortures and reverses the right to life by
destroying earth’s fragile ecology. It is not mainly the mankind that is in

\(^4\) Article 249 of the Constitution states: Power of Parliament of legislate with respect to
a matter in the State List in the national interest.

\(^5\) Article 250 of the Constitution states: Power of Parliament of legislate with respect to
any matter in the State List if a Proclamation of Emergency is in operation.

\(^6\) Article 252 of the Constitution states: Power of Parliament to legislate for two or
more states.

\(^7\) Article 253 of the Constitution states: Legislation for giving effect to international
agreements.
danger, even flora and fauna are endangered. Right to life is guaranteed under Human Rights jurisprudence. Right to life is guaranteed by the customary international law, the Universal Declaration of Human Rights of 1948 and the International Covenant on Civil and Political Rights of 1966. International Convenant on Civil and Political Rights loudly proclaims that every human being has inherent right to life which is jus cogens and no derogation by any state party is permissible even during the period of emergency. Right to life has been termed to be non-derogable and peremptory. It has a higher standing within the hierarchy of human rights norms. The scope of the right to life has expanded to include the quality of life, including the right to food, medical care, education, and a pure and decent environment. The right to living evolves from right to life. Thus, environmental protection becomes mandatory for the quality of life on the planet, Earth.

The Supreme Court of India has demonstrated exemplary judicial activism and jumped out of passive shell in environmental protection litigations. The Apex Court has given effect to Human Right to decent environment by introducing new dimensions for the interpretation of Constitutional provisions.

3.4 Fundamental Right to Life

The High Court and the Supreme Court of India reads that the right to wholesome environment is a part of the right to life, guaranteed under Article 21\(^8\) of the Constitution of India. The slow poisoning caused by environmental and atmospheric pollution amounts to violation of Article 21 of the Constitution. In fact, the right to life guaranteed in Article 21 of the Constitution embraces the protection and preservation of nature’s gifts without which life cannot be enjoyed. Moreover, environmental degradation has disastrous impact on right to livelihood which is a part of

\(^8\) Article 21 of the Constitution States: Protection of life and personal liberty.
the right to life. The right to decent environment and right to life are so intrinsically linked that the two cannot be separated. The contaminated environment will kill human life. Thus, the right to pure and decent environment underlies the right to life which is meaningless in the absence of pure, decent and healthy life supporting ecosystem which sustain life.

In *Chhetriya Mukti Sagharsh Samiti v. State of UP*¹⁰, the Supreme Court has held:

“Every citizen has a fundamental right to have the enjoyment of quality of life and living as contemplated by Article 21 of the Constitution. Anything which endangers or impairs by conduct of anybody either in violation or derogation of laws, that quality of life or living by people is entitled to be taken recourse of Article 32 of the Constitution.”

In *Subhash Kumar v. State of Bihar*¹⁰ the right to life under Article 21 of the Constitution has been held by the Supreme Court to include the right of enjoyment of pollution free water and air. The Supreme Court clarifies that if anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Article 32 for removing the pollution of water or air which may be detrimental to the quality of life. In similar words, Allahabad High Court in *DD Vyas v. Ghaziabad Development Authority*¹¹ has held Right to life as a Fundamental Right under Article 21 of the Constitution which includes the right of enjoyment to pollution free water and air. It is further held that if anything endangers or impairs that quality of life in derogation of laws, a citizen has a right to have recourse to article 32 of the Constitution for removing the pollution of water or air.

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¹⁰ AIR 1990 SC 2060.
¹¹ AIR 1993 Allahabad 57.
The Orissa High Court in *Kholamuhana Primary Fishermen Co-operation Society v. State of Orissa*\(^\text{12}\) has held that right to life includes right to enjoyment of pollution free atmosphere. The case involves the pollution of Chilka lake and massive degradation of its ecosystem. Chilka is a dream land for the poets and creative artists provides livelihood to about one and a half lakhs of people (both fishermen and non-fishermen) living in and around Chilka. The lake also attracts 132 species of migrating birds form distant places like Siberia, and has been an attraction for tourists. The petitioners alleged that Chilka fishery lease policy of the government favours non-fishermen and has resulted in sub-letting, illegal encroachment and mafiaraj in Chilka lake. They further alleged that the lease policy of the government involves massive adoption of extensive and intensive fishery for prawn culture which has resulted in the massive degradation of the eco-system of Chilka. The Orissa High Court held that Article 21 requires the maintenance of pollution free environment, enforcement, of which would be Constitutional duty of the court. It was held that the lease policy of the government is aimed at yielding revenue and does not take note of great harm caused by massive adoption of extensive and intensive prawn culture to the ecology. The court observed:

“Prawn dollar like petro dollar became so much dear that everything else was forgotten. This should not have happened. Revenue cannot be earned by sacrificing the larger interest of the society.”

The High Court, instead of quashing lease policy of the government, directed its pruning, trimming and dressing to make it reasonable regarding conferment of right of the non-fishermen and to subserve public interest and also for maintenance of pollution free environment.

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\(^{12}\) AIR 1994 Orrisa 191.
In Indian Council for Enviro-Legal Action v. Union of India, the Supreme Court has implemented right to wholesome environment as a part of the right to life enshrined in Article 21 of the Constitution on behalf of villagers and involves invasion on their right to life because of pollution caused by private companies manufacturing hazardous and inherently dangerous chemicals like oleum (concentrated from of sulphuric acid) and H acid. H acid is meant for export exclusively and its manufacture gives rise to enormous quantities of highly toxic effluents-in particular iron based and gypsum based sludge-which if not treated, pose grave threat to mother earth. The chemical manufacturing companies have been allowing toxic, untreated waste waters to flow out freely. The untreated toxic sludge was also thrown by the chemical companies in the open. The toxic substances percolated deep into the bowels of the earth polluting the aquifers and the subterranean supply of water. The water in the wells and streams turned dark and dirty, rendering it unfit for human consumption. It became unfit for the cattle to drink and for irrigation the land. The soil, the mainstay of the villagers became polluted rendering it unfit for cultivation. This resulted in disease, death and disaster in the village and the surrounding areas.

The Supreme Court issued directions to the Union, Government of Rajasthan, and Rajasthan Pollution Control Board to compel them to perform their statutory duties enjoined under the Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act 1981 and the Environment (Protection) Act, 1986, on the ground that the failure on their part seriously undermined the right to life of the residents of the affected village in Rajasthan. The Court found its duty to intervene, if the inaction of these authorities resulted in jeopardizing the right to life of the citizens of this country or any section thereof. The

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13 AIR 1996 SC 446.
Supreme Court found that the respondent chemical manufacturing companies were flouting the provisions of law and the orders issued by the lawful authorities, which amounted to invasion and serious infringement of the right to life of the villagers in the affected village of Rajasthan. The Court held:

“If an industry is established without obtaining the requisite permission and clearances and if the industry is continued to be run in blatant disregard of law to the detriment of life and liberty of citizens living in the vicinity, this court has the power to intervene and protect the Fundamental Right to life and liberty of the citizens of the country.”

In *M C Mehta v. Union of India*[^14^], the petitioner stated that the foundaries chemical/hazardous industries and the refineries at Mathura were emitting sulphur dioxide which, when combined with oxygen with the aid of moisture in the atmosphere forms sulphuric acid called 'acid rain' which has a corroding effect on the gleaming white marble the Taj. The petition further stated that industrial/refinery emissions, brick-kilns, vehicular traffic and generator sets polluted the ambient air around Taj Trapezium (TTZ) and the white marble has yellowed and blackened in places. The Supreme Court found that the emissions generated by the coke/coal consuming industries had damaging effect on the Taj and the people living around the TTZ. The Supreme Court held that the emissions resulted in violation of the right to life of the people living in the TTZ as well as damaged the prestigious monument like the Taj. The Supreme Court direct 292 industries to change over from coke/coal to natural gas as industrial fuel ordered stoppage of functioning and relocation of those industries which were not in a position to obtain gas connections for any reason.

[^14^]: AIR 1997 SC 734.
In *Obayya Pujari v. Member Secretary*, Karnataka State Pollution Control Board Bangalore\(^{15}\), the Kamataka High Court was faced with the problem of air pollution caused by the stone crushing activity in the state. The air we breathe is a mixture of nitrogen and oxygen with minor constituents, like carbon dioxide and trap gases. Pollutants in the form of dust, smoke, industrial and automobile exhaust, gaseous and particulate matter are found in the air. Nature and amount of such pollutants varies, from place to place depending upon population, vehicular density, and location of industrial units. Lungs are major organs affected by air pollution. Chronic bronchitis and airways obstruction is the result of longtime exposure to air pollution. Organic matters, including dust can cause the allergic reactions producing allergic alveolitis. Inorganic dust may get deposited in the lungs and produce fibrosis. Exposure to dust may lower the lung defences and clearing mechanism, resulting in the infections particularly tuberculosis. Such occupational exposures may also lead to cancer as well. Such hazardous effects on health are likely to be caused due to stone crushing. By stone crushing, a lot of thick dust is generated polluting the environment. The Karnataka High Court held that pollution caused by stone crushing has adverse effects on human health, animals and vegetation and therefore, violates right to life guaranteed under Article 21 of the Constitution. The Court held that the fact that the units were licenced or held necessary permission would not prevent if from issuing necessary directions inasmuch as the interests of the units have to give way to larger interest of the society. Accordingly, the Court directed the State Government to: formulate a policy for carrying on of stone crushing business; identify safer zones and shift existing crushers to the safer zones; close down the existing units which do not fall in the safe zones. The Court

\(^{15}\) AIR 1999Karn 157.
also ordered the polluting crusher units to pay compensation to the victims of pollution.

In *MC Mehta v. Kamal Nath*\(^{16}\), a motel belonging to Span Motels Private Limited carried out various constructions on the riverbed and the banks of river Beas and was discharging untreated effluents into the river. The Supreme Court 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. The Supreme Court further held that in case of violation of the right to life guaranteed under Article 21, damages can be awarded not only for the restoration of the ecological balance but also to compensate the victims who have suffered due to the disturbance of any of the basic environmental element. The Supreme Court reaffirmed and restated its practice to award damages, in exercise of its power under Article 32 of the Constitution against those who have been responsible for disturbing the ecological balance either by running the industries or any other activity which has the effect of causing pollution in the environment. Pollution is a civil wrong. By its very nature, it is a tort committed against the community as a whole. A person, therefore, who is guilty of causing pollution has to pay damages (compensation) for restoration of the environment and ecology and also has to pay damages to those who have suffered loss due to his acts. The powers of the court under Article 32 are not restricted and it can award damages in public interest litigation or a writ petition. In addition, the person guilty of causing pollution can also be held liable to pay exemplary damages so that it may act as a deterrent for others not to cause pollution in any manner. However, in proceedings under Articles 32, 226 or even 142, the court cannot impose fine on the polluter. Fine is a component of criminal jurisprudence and cannot be utilized in civil proceedings especially, under

Articles 32 or 226 by the Supreme Court or the High Court. Accordingly, the Supreme Court refused to impose the fine on the polluter by holding that fine can be imposed on the offender only after the trial of the offender for a specific offence under an Act.

In *Narmada Bachao Andolan v. Union of India*\(^{17}\), it was argued that construction of a large dam like Sardar Sarovar Dam would result in ecological disaster and violation of Article 21. The Supreme Court balanced the environmental effects of the Sardar Sarovar Project with national or public interest in view of the need of water and power for increasing population. The Court held that mere change in environment does not per se violate rights under Article 21 especially in the present case where steps were taken to improve ecology, environment and rehabilitation in case of displacement. The Court noticed that the project would make positive contribution for preservation of environment in several ways. The project by taking water drought prone and arid parts of Gujarat and Rajasthan, would effectively arrest ecological degradation which was making these areas inhabitable due to salinity ingress, advancement of desert, ground water depletion, fluoride and nitrite affected water and vanishing green cover. The ecology of water scarcity areas was under stress and transfer of Narmada water to these areas would lead to sustainable agriculture and spread of green cover. There would also be improvement in fodder availability which would reduce pressure on biodiversity and vegetation. The project by generating the clean eco-friendly hydropower would save the air pollution which would otherwise take place by thermal generation power of similar capacity.

In popular CNG litigation titled *MC Mehta v. Union of India*\(^{18}\), the Supreme Court treated air pollution in Delhi caused by vehicular emissions

\(^{17}\) AIR 2000 SC 3751.

as violation of Article 21 and therefore, the Supreme Court directed all commercial vehicles operating in Delhi to switch to CNG fuel mode for safeguarding health of the people.

The Supreme Court and High Courts have consistently held that Noise pollution would amount to violation of right to life guaranteed under Article 21 of the Constitution. In *Sayeed Maqsood Ali v. State of Madhya Pradesh*,\(^\text{19}\) MP High Court referred to the decision of the Supreme Court in the case of *Church of God (Full Gospel) in India v. KKR Majestic Colony Welfare Association*\(^\text{20}\) and held that noise pollution amounts to violation of Article 21 of the Constitution. Noise Pollution causes serious disorders and creates a dent in the fabric of society. Noise causes loss of sleep, loss of efficiency, hearing loss or deafness, high blood pressure, depression, allergy, annoyance, nervous tension, heart disease, migraine an gastrointestinal disorders. The extent of damage depends upon the duration and intensity of noise. The terms ‘life’ as employed under Article 21 of the Constitution does not mean basic animal existence but conveys living of life with utmost nobleness and human dignity. Right to live in its ambit includes right to health. Even in international sphere, emphasis is laid on proper health and a right is enshrined providing security against sickness and disablement under Article 25 of the Universal Declaration of Human Rights. Thus, noise pollution amounts to complete reversal and nullification of the right to life guaranteed under Article 21 of the Constitution.

### 3.5 Fundamental Right to Equality

Article 14\(^\text{21}\) of the Constitution enshrines the right to equality before the law and protects a person against arbitrary or unreasonable State actions. Article 14 prohibits arbitrariness because every arbitrary action

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\(^{19}\) AIR 2001 MP 220.

\(^{20}\) AIR 2000 SC 2773.

\(^{21}\) Article 14 of the Constitution States: Equity before law.
violates the principle of equality enshrined in its. Article 14 has been invoked in *Kinkri Devi v. State*\(^{22}\), which involves indiscriminate grant of mining leases and the unchecked and unscientific exploitation of the mines by the lessees, especially in the hilly tracts and the regions of the Himalaya which in all likelihood, might result in evil consequences having a far reaching and lasting impact on natural wealth, the resources of the country and the local population. It is alleged that the government arbitrarily granted the permission for mining activities without adequate consideration of environmental impact which amounts to violation of Article 14.

The Himachal Pradesh High Court accepted the above version and held that to ensures the attainment of the Constitutional goal, protection and improvement of the natural wealth and the environment and to safeguard forests, the lakes, the rivers and the wild life, to protect the people inhabiting the vulnerable areas from hazardous consequences of the arbitrary exercise of the power of granting mining leases, indiscriminate operation of the mines on the strength of such leases without due regard to their life, liberty and property, the court would be left with no alternative but to intervene effectively by issuing various writs, orders and directions including the direction for the closure of mines, the operation whereof proves to be hazardous and the total prohibition of the grant or renewal of mining leases till the government evolves a long terms plan based on a scientific study with a view to regulate the exploitation of minerals in the state without detriment to the environment, the ecology, the natural wealth and the resources, an the local population.

Although Article 14 has not been frequently invoked by the Supreme Court or the High Courts in environmental protection cases, its contents have witnessed effectuation especially in cases involving mining and stone crushing activities. The first case of this kind decided by the

\(^{22}\) AIR 1987 HP 4.
Supreme Court was Rural Litigation and *Entitlement Kendra, Dehradun v. State of UP*\(^{23}\), in this case, a large number of lessees of limestone quarries were involved. The mining activities resulted in pollution of the Mussoorie Hill range forming part of the Himalayas. Incidentally, the issue of development and environment was brought into sharp focus for the first time in this case and the Court laid emphasis on the need for reconciling the two in the larger interest of the country. The Court pronounced against indiscriminate renewal of the mining leases and directed closure of the mines which caused grave pollution.

In *General Public of Saproon Valley v. State of HP*\(^ {24}\), mining of limestone in the beautiful Saproon valley situated close to Solan town in Himachal Pradesh caused great damage to the field, the environment and resulted in the pollution of water and soil erosion of the surrounding land and ecological imbalance. The High Court directed the State to strike a balance between the tapping of nature resources for the purposes of the socio-economic development and the preservation and protection of the ecology by the adoption of a long terms perspective planning. The court warned the state that the failure of the administration to attend the above task in the national interest would amount to violation of the fundamental rights conferred by Articles 14 and 21 of the Constitution.

Echoing similar sentiments, Karnataka High Court in *Obayya Pujari v. Member Secretary KSPCB, Bangalore*\(^ {25}\), directed the state government to immediately formulate a policy regulating carrying on of stone crushing business. State was also directed to identify safer zones and shift existing crushers to safer zones. The existing stone crushers which did not fall in safer zones were ordered to be closed down.

\(^{23}\) AIR 1985 SC 652.

\(^{24}\) AIR 1993 HP 52.

\(^{25}\) AIR 1999 Karnataka 157.
3.6 Fundamental Right to Profession, Trade or Business

Article 19(1)(g)26 of the Constitution provides that all citizens shall have the right to practice any profession, or carry on any occupation, trade or business. Accordingly, in case involving closure of pollution industrial units, the courts act that task of balancing the environmental imperative with the fundamental right to carry on any occupation, trade or business guaranteed under Article 19(1) (g) of the Constitution. The fundamental right to carry on any occupation, trade or business is subject to reasonable restrictions which may be imposed in the interest of the general public as provided under Article 19(6)27 of the Constitution. No one has the right to carry on business in the manner by which the business activity becomes a health hazard to the entire society.

The case of Abhilash Textiles v. Rajkot Municipal Corporation,28 was concerned with the petitioners who were carrying on the business of dyeing and printing works and had challenged the notice issue by respondent-municipal commissioner, which called upon the petitioners to stop the discharge of dirty water on the road and drainage within a certain time or face closure in case of non-compliance with the notice. The petitioners contended that they had been carrying on the business for the last 20 to 25 years and the industry provided employment to 20 to 30 thousand families. It was alleged that the proposed action in the notice would have harsh consequences as the petitioner might have to close their business. Thus, according to the petitioners, the notice violated their fundamental right to carry trade or business as enshrined in article 19(1)(g) of the Constitution.

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26 Article 19(1) (g) of the Constitution states: Protection of certain rights regarding freedom of speech, etc.
27 Ibid., Article 19(1)(6).
28 AIR 1988 Gujarat 57.
The case, inter alia, involves the issue whether there is any right to carry on business or trade in an unregulated manner which results in nuisance to the public and health hazards to the society at large. The Gujarat High Court held that article 19(1) (g) of the Constitution confers right upon every citizen to practice any profession or to carry any occupation, trade or business. But this fundamental right is subject to reasonable restrictions which may be placed in the interest of general public as provided under article 19(6) of the Constitution. The Court clarified that no one has the right to carry the business so as to cause nuisance to the society.

The Gujarat High Court observes that by discharge of effluent water on public road and by drainage system, the entire environment of the locality would be polluted. The Court found no merit in the contention of the petitioners that they were carrying on business for 20 to 25 years. The Court finally held:

“If the petitioners wish to carry on the business, they may have to incur expenditure and they must provide for the purification plant before discharging the effluent water on the public road or the drainage system. The petitioners cannot be allowed to reap profit at the cost of public health. This is the mandate of law.”

The argument of financial inability of the polluter to install a plant for the treatment of effluents is not sustainable in view of the fact that pollution violates the right to life of not only the residents but also the workmen as well as the management of the polluting unit. The polluting units which have no resources to incur the cost of pollution deserve closure. No polluting industry can be permitted to run under the garb of development if it results in public nuisance and imbalance of the ecosystem. Unregulated and unrestricted development cannot be permitted.
Restrictions can be imposed on the development activities in the interest of larger public. This is the mandate of sustainable development.

In Rural Litigation and *Entitlement Kendra, Dehradun v. Sate of UP*\(^{29}\) it was pointed out that as a result of the closure order, the workmen employed in the limestone quarries would be thrown out of employment thereby resulting in the contravention of their fundamental right to profession under article 19(1) of the Constitution. The Supreme Court stated that it would be a price to be paid for protecting and safeguarding the right of the people to live in healthy environment. However, the court directed the government to start reclamation of the areas forming part of limestone quarries, afforestation and soil conservation programmes. The Court ordered that the workmen thrown out of the employment as a consequence of the order be provided employment in the afforestation and soil conservation programmes to be taken up in the said area.

In *Obayya Pujari v. KSPCB, Bangalore*\(^{30}\), it was submitted that the issuance of directions involving closure of the polluting stone crushing units would contravene fundamental right of carrying on business under article 19(1) (g) of the Constitution. The Karnataka right under Article 19(1) (g) admitted reasonable restrictions in larger public interest. Right to freedom as enshrined in Article 19 of the Constitution though fundamental, is not an absolute right and is always subject to reasonable restrictions which may be imposed in the larger interests of the society. Freedom of profession, trade and business as contemplated by Article 19 is always subject to the limits as may be imposed by the state in interests of public welfare. Though a person has a right to carry on any business of his choice, there is no right to carry on any business inherently dangerous to the society. In adjudging the reasonableness of restrictions, maintenance of

\(^{29}\) AIR 1985 SC 652.
\(^{30}\) AIR 1999 Karn 157.
public health is of paramount consideration. The interests of the society are to be balanced with the interests of the citizens to carry on business.

The factual matrix of the matter in *AP Gunnies Merchants Association, Hyderabad v. Govt. of AP*[^31] is that the petitioners were carrying on the business of cleaning and trading of used gunny bags in a densely populated place which resulted in traffic congestion and air pollution. The orders were issued by the appropriate authority for shifting of the business to a safer place to avoid air and environmental pollution. It was submitted that the orders would violate Article 19 provisions. The Andhra Pradesh High Court held that the right to carry business in old gunny bags was not absolute and restrictions could be imposed to avoid environmental pollution. The business carried on by the petitioners was endangering the lives of the people living in the area, more particularly the traders and the public in general, who visited the market day in and day out, as also the workers engaged therein. The Court, therefore did not find any fault with the impugned order which directed shifting of the business of the petitioners form thickly populated area to a safer place to avoid environmental pollution.

### 3.7 Duty to Protect Environment

The Forty Second Amendment in the Constitution of India of 1976 has introduced articles 48A[^32] and 51A(g)[^33] in the Constitution which from part of the Directive Principles of State Policy and Fundamental Duties respectively. In India jurisprudence, the legal value of the Directive principles has constantly grown. Directive principles guide state actions but possess the legal status of being complimentary to fundamental rights and

[^31]: AIR 2001 AP 453.
[^32]: Article 48A of the Constitution states: Protection and improvement of environment and safeguarding of forests and wild life.
[^33]: Article 51A (g) Fundamental duties states: It shall be the duty of every citizen of India-(g) to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.
impose an obligation on the government, including courts to protect the environment.

Fundamental duties are social obligations. Article 51 A (g) of the Constitution imposes duty on every citizen to project and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. Preservation of the environment and keeping the ecological balance unaffected is a task which not only the government but also every citizen must undertake. This is a social obligation which finds expression in Article 51A (g) of the Constitution. The provision of fundamental duty flows from the World Charter for Nature adopted by the United Nations General Assembly on 28 October 1982. The Charter recognizes the right of the individual and non-government entities by providing that all persons shall have access to means to redress when their environment has suffered damage or degradation\(^{34}\). The Charter also imposes a corresponding duty upon persons to ensure that objectives and requirements of Charter are fulfilled\(^{35}\).

Articles 48A and 51(g) contain both a Constitutional pointer to the state and Constitutional duty of the citizens not only to protect but also to improve the environment and to preserve and safeguard the forest, the flora and fauna, the rivers and lakes and all the other water resource of the country. The neglect and failure to abide by the pointer or to perform the duty is nothing short of a betrayal of fundamental law which the state and indeed, every Indian, high or low, is bound to uphold and maintain. Thus, it is the duty of the state as well as the individual to protect and improve the environment.

\(^{35}\) Ibid., Article 24.
In *DD Vyas v. Ghaziabad Development Authority*, writ petition was moved to compel GDA to develop a public park in a space earmarked for it instead of carving out plots. The Allahabad High Court held that article 48A of the Constitution enjoins upon the State to endeavour, protect and improve the environment of the country. The respondents having failed to develop the Abu Park have belied all the cherished hopes of the state and the citizens. The Court held that it was the duty of the respondents to develop Abu Park as an attractive public park to improve the environment and to enable general public to benefit therefrom. In *Taj Tapezium case*, the Supreme Court has interpreted Articles 48A and 51A (g) as constitutional mandate to protect and improve the environment. Commenting on the legal value of articles 48A and 51A(g), Karnataka High Court in *Obayya Pujari v. Member Secretary, KSPCB, Bangalore*, observed:

“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. The least that the court may do is to examine whether appropriate consideration are borne in mind and irrelevancies excluded. In appropriate cases, the court may go further, but how much further depends upon the circumstances of the case. The court may always give the necessary directions.”

*Rural Litigation and Entitlement Kendra v. State of UP* is the first case of its kind in the country invoking the issues relating to environment and ecological balance. The Supreme Court passed two orders in the case,

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36 AIR 1988 SC 1420.
37 *MC Mehta v. UOI* AIR 1997 SC 734.
38 Supra, note 15.
one in 1985 and the second in 1987. The main allegation in the case related to unauthorised and illegal mining operations carried on in the Mussoorie Hills, adversely affecting the ecology of the areas leading to environmental disturbances. The Court was faced with the question whether the mine lessees can be allowed to carry on mining operations without adversely affecting environment or ecological balance or causing hazard to individual, cattle and agricultural land. The case brought into sharp focus the conflict between development and ecology and served to emphasise the need for reconciling the two in the larger interest of the country. The Court warned that the Doon Valley was in danger because of erratic, irrational and uncontrolled quarrying of limestone. The landscape had been stripped bare of its verdant cover. The Court warned Government—both at the Centre and in the State—to realise that the stake involved in the matter was large and had far reaching effects. The evil consequences would last long; the greenery of Indian might perish and the Thar desert might expand its limit. The Apex Court observed:

The consequences of interference with ecology and environment have now come to be realized. It is necessary that the Himalayas and the forest growth on the mountain range should be left uninterfered with so that there may be sufficient quantity of rain. The top soil may be preserved without being eroded and the natural setting of the area may remain intact. Of course, natural resource have got to be tapped for the purposes of social development but one cannot forget at the same time that tapping of resource has to be done with requisite attention and care so that ecology and environment may not be affected in a serious way. There may not be any depletion of water resources and long-term planning must be undertaken to keep up the national wealth.
It has always to be remembered that these are permanent assets of the mankind are not intended to be exhausted in one generation. Preservation of the environment and keeping ecological balance unaffected is a task which not only the Government but also every citizen must undertake. It is a social obligation and let every Indian citizen be reminded that it is his fundamental duty as enshrined in Article 51A (g) of the Constitution.

The Supreme Court gave effect to the social obligation to protect the environment and reminded every Indian Citizen of his fundamental duty as enshrined in article 51A (g) to protect the environment.

In *Sitaram Chhaparia v. State of Bihar* 40, Patna High Court held that protection of the environment is a fundamental duty. The petition was filed as public interest litigation alleging that an industrial unit consisting of a tyre retreading plant set up in the residential area was emitting carbon dioxide gas and other obnoxious gases from its furnaces causing harm to the environment for the locality. The Court regretted that the State Government of Bihar and the Bihar State Pollution Control Board paid lip service to their obligations under the law to monitor and prevent environmental pollution especially under the Constitution of India and the Environment (Protection) Act, 1986 which require strict vigil on matters of environment and ecology. The Court termed such impervious approach and attitude by state functionaries as ‘anti-nature’. Notices were served on the authorities responsible for monitoring environmental degradation and ecological imbalance that the tyre retreading plant set up in the residential area was discharging large volumes of carbon dioxide gas and other pollutants. The Court, however, lamented that the muscle power of vested interests made their presence felt regardless of the laws which obliged the state to control pollution and taken steps for environmental protection. The

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40 AIR 2002 Patna 134.
high court of Patna finally held that protecting the environment is a fundamental duty under article 51 A of the Constitution of India.

The judiciary has treated environmental protection as emergency situation and, therefore, treated Directive Principle contained in article 48A as complimentary to Fundamental Rights. The obligation of the states to protect and improve the environment flows from article 48A of the Constitution. The constitutional obligation of the states to protect and improve the environment has two folds, namely compensation to the victims of pollution and the restoration of ecology.

Article 51A(g) of the Constitution which contains a social obligation imposes fundamental duty on citizens to protect and improve the environment. It imposes constitutional obligation on the polluter to bear the costs of pollution by compensating the victims of pollution and adoption of the ecological remediation measures. Thus, article 51A (g) gives effect to the well known fundamental principle of the international environmental jurisprudence, namely, ‘polluter pays principle’ by requiring the polluter to bear the costs of pollution. Article 48A treats the state as ‘deemed polluter’ if it fails to abide by the mandate of protection and improvement of the environment.

Thus it is observed that there was no such Article in Constitution of India as it was initially framed and adopted but in less than 26 years, Article 48-A was inserted by 42nd Amendment which provided for the State to protect and improve the environment and to safeguard forests and wildlife of the country. Part IV- A enumerating the Fundamental Duties was also adopted. Article 51-A enjoins a duty on every citizen to protect and improve environment.

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