CHAPTER-III

CONSTITUTIONAL POLICY AND ENVIRONMENT PROTECTION

The Constitution being the fundamental law of the land has a binding force on citizens, non-citizens as well as the State. The main cause of environmental degradation is the human activity in one way or the other. Law is regulator of human conduct. Hence, the law plays an important role in the protection of environment from pollution by regulating the human activities. In any environment conscious State, environmental problems are generally handled at the legislature level. The Indian Constitution is perhaps the first Constitution in the world which contains specific provisions for the protection and improvement of the environment. The Constitution of India contains specific provisions for the conservation and improvement of environment including forests, lakes, rivers, wild life and to have compassion for living creatures.

The Indian Constitutional provisions regarding the environmental protection have been followed by other nations in the world. For example framers of the Constitution of South Africa were greatly influenced by the provisions relating to the environment protection under the Indian Constitution and they have also incorporated the similar provisions in their constitution.

1. Kailash Thakur, Environmental Protection Law and Policy in India, 199 [1999].
4. Supra note 2 at 36.
After attaining independence in the year 1947 no serious attention was paid towards the environmental degradation. At that time probably there were other more important and serious matters which drew attention of the concerned authorities. Cleanliness of nature was not in the mind of anybody at that time. The Constitution of India, as enacted in 1950 did not contain any specific provision to deal with environmental pollution. But after the Stockholm Declaration, 1972, when entire world decided to take steps to do away the menace of environmental pollution, India also took initiative in the year 1976 by 42nd amendment of the Constitution to include environmental related provisions in it's Constitution, and article 48-A was included in the directive principles of the State and article 51-A(g) as fundamental duty on the citizens for the protection of natural resources.

The preamble of the Indian Constitution provides, that one of the main objective of the Constitution is to assure dignity of every citizen. Article 21 of the Indian Constitution provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law. The Supreme Court of India in Maneka Gandhi v. Union of India, 5 has broadly interpreted right to life and held that right to life includes right to live a dignified life which includes all necessities of life.

From the above discussed decision of the court, it is clear that water is also one of the necessity of life, therefore, the right to live also includes, right to get clean and unpolluted water. Principle I of the Stockholm Declaration, 1972 finds reflection in

5. AIR 1987 SC 746.
articles 14, 19, 21 of the Constitution of India. These articles deal with the right to equality, freedom of expression and right to life and personal liberty respectively.6

A. Fundamental Rights

These are provided under part III of the Constitution of India. All these rights are secured to the people of India under the Constitution. These fundamentals rights are intended to serve generation after generation. In order to treat a right as fundamental right it is not necessary that it should be expressly stated in part III of the Constitution. In India the Courts are taking lead in interpreting unenumerated rights in part III of the Constitution. Environment protection is one of them. The Judiciary has interpreted right to life, to live in a healthy environment. Thus, the judiciary in India has provided impetus to the Human Rights approach for the protection of environment. For the present study only articles, 14, 19 and 21 are relevant, which are being discussed here under.

(a) Right to Equality:

Article 14 of the Constitution guarantees right to equality. This article provides, that the State shall not deny to any person equality before the law or equal protection of the laws within the territory of India.

The right to equality enshrined in article 14, strikes at “arbitrariness” of any governmental action “because an action

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6. Principle I of the Stockholm Declaration provided that man has fundamental right to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and well being, and bears a solemn responsibility to protect and improve the environment for present and future generations.
that is arbitrary must necessarily involve a negation of equality".7 In fact “equality and arbitrariness are sworn enemies”. The principle of “non-arbitrariness” prevents article 14 like a “brooding omnipresence”. Whenever there is arbitrariness in state action, whether of legislative or of executive or of an authority under article 12, article 14 immediately springs into action and strikes down such action.8 In fact, the absence of arbitrary power is the first essential of the rule of law upon which our whole Constitutional system is based.9

Article 14 also applies to matters of governmental policy and if the policy or any action of the government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional. It is implicit in article 14 that a change in policy must be made fairly.10 Thus, it is well settled that every State action, in order to survive must not be susceptible to the vice of arbitrariness which is the crux of article 14 of the Constitution and basic to the rule of law.

In view of the above broadened interpretation of right to equality, article 14 is generally resorted to in urban development where permission for construction is granted by the authorities arbitrarily under its discretionary powers without evaluating public interest and without application of mind and considering the environmental impact. One such example was found in Bangalore Medicle Trust v. B.S. Muddappa11. In this case the

8. Supra note 2 at 70.
Supreme Court thwarted the attempt of the administration to convert a public park site into a nursing home.

The Apex Court highlighted the importance of pollution free environment in the following words, “protection of the environment, open spaces for recreation and fresh air, play grounds for children and other conveniences or amenities are matters of great public concern and if vital interest to be taken care of in a development scheme. The public interest in the reservation and preservation of open spaces for parks and playgrounds cannot be sacrificed by leasing such sites to private persons for conversion to some other user, it would be direct conflict with the Constitutional Mandate”.

The Court further observed that “discretion is an effective tool of administration”. When affecting public interests, it should be exercised objectively, rationally, intelligibly and fairly. The authority cannot act whimsically or arbitrarily. It should also not to be exercised in undue haste disregarding the procedure.\textsuperscript{12}

In \textit{D.D. Vyas v. Ghaziabad Developmental Authority},\textsuperscript{13} the petitioner’s grievance was that the respondents had not taken any steps to develop the area reserved for park. On the other hand, the respondents were carving out plots on such open spaces which were dedicated for public park in the plan and alienate the same with a view to earning huge profits. The court held that the authority can not amend the plan in such a way so as to destroy its basic features allowing the conversion of open spaces meant for public park.

\textsuperscript{12} \textit{Id.} at 80.
\textsuperscript{13} \textit{AIR} 1993 All. 57.
From the above mentioned decisions of the court, it is clear that the congested areas also invite pollution problems because in these areas, there is no proper system of sewer etc. which causes water pollution.

The Court also used article 14 to justify the government policy in *Khotomauhana Primary Fishermen Co-Op Society v. State*\(^4\). The brief facts of this case were that the government framed a policy regarding fishing in Chilka lake so as to protect the traditional rights of fishermen. However, this policy of Government was not acceptable to the fishermen, therefore, they challenged it before the Court being transgression of article 14 of the Constitution. The court held that the said policy was neither arbitrary nor ambiguous and hence not violative of article 14 of the Constitution. However, the Court further pointed out that adoption of extensive and intensive prawn culture to earn “prawn dollars” in disregarded to ecology was not proper.

The Court took stern action against the arbitrary decision of the authorities, in *Mandu Distilleries Pvt. Ltd. v. M.P. Pradushan Niwaran Mandal*.\(^5\) In this case the Pollution Control Board issued direction for stoppage of production by the industry on the ground that it was causing water pollution. The industry challenged the orders of the Board in the High Court. However, the court found that there was serious flaw in “decision making process”. The said decision was taken on extraneous consideration and arbitrarily. Grounds stated in show cause notice and basis for orders were not the same. The court quashed the order of the Board as violative of article 14 of the Constitution.

\(^4\) AIR 1994 Ori. 191.

\(^5\) AIR 1995 M.P 57.
In *Ivory Traders and Mfg. Assn. v. Union of India*\(^{16}\), the Court justified the ban on business in animal species which were on the verge of extinction. The Court held that the ban on trade in imported ivory and its article is not violation of article 14 of the Constitution and does not suffer from any of the malafides namely unreasonableness, unfairness and arbitrariness, because this ban was put to maintain the equilibrium in nature.

From the above mentioned decisions of the Court it can be said that where due to the governments arbitrary policy, decision etc. natural resources are affected negatively, there article 14 can be invoked, for the protection of our environment even against Government.

(b) **Freedom to Carry on Profession, Occupation, Trade or Business:**

Article 19 [1] [g] of the Constitution, provides to all citizens a right to practice any profession, or to carry on any occupation, trade and business. However, this right of the citizens is not absolute. Article 19 [6] puts restrictions on this right in the interest of general public. Therefore, no person has right to carry on such profession, business etc. which causes injury to the public and poses health hazard to the society at large. The similar views were expressed by the Court in *Abhilash Textile v. Rajkot Municipal Corporation*\(^{17}\). The brief facts of this case were that the petitioners were carrying on the business of dyeing and printing works at different places in the city of Rajkot. The petitioner mill was discharging dirty water of the mill on public road and in

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17. AIR 1988 Guj. 57.
public drainage without purifying the same, thereby causing damage to the public health.

The Municipal Committee, Rajkot served notice on the petitioner mill, ordering it to stop discharging dirty water on public road without purifying. It was further ordered by the Committee that if the mill failed to do so, it would be closed down. The Court held, that article 19(1)(g) is not absolute and the restriction can be put under article 19 [6] if the profession, trade etc. of the petitioner causes nuisance to the society.

The court further held that the petitioners cannot be permitted to reap profits at the cost of the public health as they had no right to carry on their business without complying with the requirement of the law.18 Hence, the above mentioned case, highlighted the Constitutional right under article 19[1] [g] to carry on any business vis-à-vis its effect on public health, because the public health is also vital part of environmental protection.

In *M.C. Mehta v. Union of India*19, the tanneries were discharging effluents from their factories in the river Ganga, which was causing pollution to the river water. The tanneries did not set up any primary treatment plant, neither they were willing to establish it in near future. The apex court held, that tanneries should be asked to stop working, as effluent discharged from tanneries is ten times noxious when compared with the domestic sewage water which flows into the river. Accordingly the court passed the following order:-

18. Ibid.
We are, therefore, issuing the directions of the closure of those tanneries which have failed to take minimum steps required for the primary treatment of industrial effluents. We are conscious that closure of tanneries may bring unemployment, loss of revenue, but life, health and ecology have greater importance to the people.\textsuperscript{20}

The financial incapacity of the tanneries to set up the treatment plant was also rejected by the Court. In this regard the Court observed:

The financial capacity of the tanneries should be considered as irrelevant while, requiring them to establish primary treatment plants. Just like an industry which cannot pay minimum wages to its workers cannot be allowed to exist, a tannery which cannot set up a primary treatment plant cannot be permitted to continue to be in existence, for the adverse affect on the public at large which is likely to ensure by the discharging of the trade effluents from the tannery to river Ganga would be immense and it will outweigh any inconvenience that may be caused to the management and the labour employed by its on account of its closure.\textsuperscript{21}

From this decision of the Court it is clear that the Court has considered the protection and improvement of environment as matter of general public interest and employed this tool in putting reasonable restrictions on the citizen’s right to carry on any trade, occupation and business. Because if a person ekes out his livelihood from such profession, which leaves negative effect on his

\textsuperscript{20} Id. at 1047-48.
\textsuperscript{21} Id., 1045.
health then such profession do not serve any purpose. Because without good health money is worthless. Then the state can ban that business, trade etc.

In. S. Jagannath v. Union of India, 22 though in this case the Supreme Court did not directly invoke article 19(1) (g) of the Constitution, but when it decided the case, it had in mind the scope and content of article 19(1)(g). It is evident from the decision of the case, the Supreme Court held, that sea beaches and sea coasts are gifts of nature and any activity polluting the same cannot be permitted. The intensified shrimp (prawn) farming culture industry by Modern Method in Coastal areas and causing degradation of Mangrove ecosystem, depletion of plantation, discharge of highly polluting effluents and pollution of portable as well as ground water. The Court held, therefore, the said activities of the industries are violative of Constitutional provisions and various other environmental legislations.

Fundamental rights are included in our Constitution for the welfare of citizens and they are free to carry business of their choice, but since no right is absolute, therefore, if any occupation, trade etc. is against the interest of general public the State can put restrictions on the carrying of such business under article 19 (6) of the Constitution. If any trade effects negatively on our environment, that would be against the interests of general public, as it effects negatively on the health of people, then the Government can ban such business. The similar views were expressed by the Apex Court in Indian Handicrafts Emporium and

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The brief facts of this case were that the appellants were engaged in the business of manufacture and sale of articles made of ivory. They imported ivory from Africa during 1971 to 1986. In 1977 the Indian elephant was brought within the purview of schedule of the Act. The export of ivory was also banned in the same year. Again the Act was amended in 1986, by which trade or commerce in wild animals, animal articles and trophies was restricted. In 1991 the Act, was again amended and section 49C was inserted, which imposed a total ban on the trade of imported ivory and six months time provided for the disposal of all stocks of ivory held. The appellant filed a writ before the High Court challenging the vires of the Act. The High Court stayed the operation of the Act, but later vacted the stay and upheld the vires of the Act. In the interregnum the appellants did not dispose of their stock of ivory. Then the appellants challenged the constitutionality of the Act, before the Supreme Court and inter alia contended that the ivory that has been legally imported by them ought not to vest with the government and that they should be at liberty to deal with it, because it is violation of article 19 (1) (g) of the Constitution.

The Supreme Court dismissed the writ petition and upheld the prohibition of trade in ivory. The court held that dealing in imported ivory so long the law permits may be a fundamental right under article 19 (1) (g) of the Constitution, but if the statute prohibits it then it ceased to be fundamental right. It must be held to be a law within the meaning of clause (6) of article 19 of the constitution in terms where reasonable restriction is imposed.

A trade which is dangerous to ecology may be regulated or totally prohibited.

The court further held that the provisions of the statute are also transgression of articles 48-A and 51-A (g) of the Constitution. The court observed that it cannot shut its eyes to the statement made in article 48-A of the Constitution, which enjoins upon the State to protect and improve the environment and to safeguard the forest and wildlife of the country. Because destruction of environment i.e. forest, wildlife, is contrary to the directive principles of the State policy. Similarly article 51-A (g) requires every citizen to protect and improve the natural environment including forest, lakes, rivers and wildlife.

From this decision of the court it is clear that Indian courts are pro environmental and they do not mind even to close down such business which though adds in the economy of the country, but also leaves negative effect on our environment.

The Apex court referred this case in Balram Kumawat v. Union of India and Others and held that there is complete prohibition of trade in ivory. Such a complete prohibition is a reasonable restriction within the meaning of article 19 (6) of the Constitution and held that provision of the Wild Life (Protection) Act, 1972 is not unreasonable, therefore, does not attract the wrath of article 14 of the Constitution.

(c) Right to Wholesomeness of Water

Article 21 of the Constitution of India guarantees all persons a fundamental right to life and personal liberty. Article 21 is the heart of fundamental rights and has received expanded meaning

25 Article 21 provides, "No person shall be deprived of his life or personal liberty except according to procedure established by law".

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from time to time and there is no justification as to why right to live in a healthy environment, cannot be interpreted in it. For healthy existence and preservation of the essential ingredients of life, stable ecological balance is required. Article 21 guarantees a fundamental right to life, a life of dignity, to be lived in a proper environment, free of danger from any disease and infection. It is an established fact that there exists a close link between life and environment. The talk of fundamental rights and, in particular, right to life would become meaningless if there is no healthy environment.26

The right to a wholesome environment as part of article 21 is first implicit in R.L. and E. Kendra, Dehradun v. State of U.P.27 The brief facts of this case were that the Rural litigation and Entitlement Kendra, Dehradun wrote to the Supreme Court against the illegal limestone mining which denuded the Mussorie Hills of trees and forest cover and accelerated soil erosion resulting in land slides and blockage and underground water channels which fed many rivers and springs in the valley. The Court ordered the closure of number of lime-stone quarries. The Court observed:

This is the first case of its kind in the country involving issues relating to environment and ecological balance and the questions arising for consideration are of grave moment and significance not only to the people residing in Mussorie

26 Supra note 2 at 48.
Hill range, but also in their implications to the welfare of the
generality of people, living in the country.\textsuperscript{28}

From this decision of the Court, it is clear that the Courts
are legitimizing its role as the enforcing machinery of the
Constitutional provisions to prevent all actions of the government
and general masses from upsetting the environmental balance.

The Supreme Court once again impliedly treated the right to
live in pollution free environment as a part of fundamental right
to life under article 21 of the Constitution in \textit{M.C. Mehta v. Union
of India}\textsuperscript{29}. In this case the Supreme Court had evolved new
principle of absolute liability. The Court further held, that if the
environment is polluted due to any activity on the premises of the
industry, whether knowingly, negligently or accidentally. The
industry would not escape from its liability.

In \textit{T.Damodhar Rao v. S.O. Municipal Corporation
Hyderabad}\textsuperscript{30}, the Court gave a clarion call, when it observed:

It would be reasonable to hold that the enjoyment of life and
its attainment and fulfillment guaranteed by article 21 of the
Constitution embraces the protection and preservation of
nature’s gift without which life cannot be enjoyed. There can
be no reason why practice of violent extinguishment of life
alone should be regarded as violative of article 21 of the
Constitution. The slow poisoning by the polluted
atmosphere caused by environmental pollution and

\begin{footnotesize}
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\item Id. at 653.
\item AIR 1987 SC 1086.
\item A.R.I.D 1987 A.P. 171.
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Spoilation should also be regarded as amounting to violation of article 21 of the Constitution.\textsuperscript{31}

Thus, right to live in healthy environment was specifically declared to be a part of article 21 of the Constitution.

Maintenance of health, preservation of the sanitation and environment falls within the purview of article 21 of the Constitution as it adversely affects the life of the citizen and it amounts to slow poisoning and reducing the life of the citizen because of the hazards created, if not checked\textsuperscript{32}.

In \textit{Charan Lal Sahu v. Union of India}\textsuperscript{33}, the Apex Court upheld the validity of the Bhopal Gas Leak Disaster [Processing of Claims] Act, 1985. It was further held by the Court that, in the context, of our national dimensions of human rights, right to life, liberty, pollution free air and water is guaranteed by the Constitution under article 21.

It is duty of the State to take effective steps for the protection of rights guaranteed in the Constitution. In \textit{F.K. Hussain v. Union of India}\textsuperscript{34} the Court pointed out that the right to sweet water and the right to free air, are attributes of the right of life, those are the basic elements which sustain life itself.

The right to live is a fundamental right under article 21 of the Constitution and it includes the right of enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to article 32 of the

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\item \textsuperscript{31} Ibid.
\item \textsuperscript{32} L.K. Koolwal v. State, A.I.R. 1988 Raj 2.
\item \textsuperscript{33} [1990] 1 SCC 613
\item \textsuperscript{34} AIR 1990 Ker. 321
\end{itemize}
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Constitution for removing the pollution of water or air which may be detrimental to the quality of life.\textsuperscript{35}

In \textit{Rajiv Ranjan Singh v. State of Bihar},\textsuperscript{36} the Court held that failure to protect the inhabitants of the locality from the poisonous and highly injurious effects of the distillery’s effluents and fumes amounted to an infringement of the inhabitants rights guaranteed under article 21 of the Constitution.

It was further held by the Court that in case it comes to light that any person has contacted any ailment the cause of which can be directly related to the effluent discharged by the distillery, the company shall have to bear all expenses of his treatment and the question of awarding suitable compensation to the victim may also be considered.\textsuperscript{37}

The ecology must be maintained at all costs, even grant of quarry can also be cancelled, if it causes environmental pollution, the similar view was expressed by the Court in \textit{Bheemagiri Bhaskar v. Revenue Divisional Officer, Bhongir}.\textsuperscript{38} In this case the court held that the grant of quarry permits, for lifting of sand, which is a minor mineral may be granted in terms of the provisions of Mines and Minerals [Regulation and Development] Act, 1957 but, no permit can be granted if the same attracts the wrath of article 21 of the Constitution. If the indiscriminate quarrying and lifting of sand from the river beds, streams is allowed to continue, the fertile lands will become sterile for scarcity of water and thereby, the very survival of the persons

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\textsuperscript{36} AIR 1992 Pat. 86.
\textsuperscript{37} Id. at 92.
\textsuperscript{38} AIR 2001 AP 492.
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depending entirely on cultivation will be at stake and their right to live guaranteed under article 21 of the Constitution will be infringed.

The right to live with human dignity is the fundamental right of every Indian citizen and, therefore, in the discharge of its responsibilities to people, State has to provide at least minimum conditions ensuring human dignity. The similar view was expressed by the Court in *K.C. Malhotra v. State*.39 In this case the drains of the area where the petitioner was residing were open, which were posing threat to the human health. Despite a number of reminders to the Municipality of the area regarding covering the drains nothing was done. Therefore, the petitioner knocked at the door of the court.

The Court directed the State that there must be separate sewage line from which the filthy water flow out. The drainage must be covered and there should be proper lavatories for public convenience which should be regularly cleaned. Public health and safety cannot suffer on any count and all steps to be taken as article 47 makes it a paramount principle of government and Municipality of the area for the improvement of public health as its primary duties.

Enjoyment of life and its attainment including right to live with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which the life cannot be enjoyed. Environmental, ecological, air, water pollution etc. should be regarded as

amounting to violation of article 21. Therefore, hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a human and healthy environment.\textsuperscript{40}

For the development of human beings in healthy manner, healthy environment is necessary. As a person cannot lead healthy life unless, the water and air would be pollution free. Maintenance of health, sanitation and preservation of environment is responsibility of State, because article 21 of the Constitution deals with right to life and personal liberty, which is a fundamental right. It can be enjoyed by citizens only if the State will properly maintain sanitation etc which also poses threat to our water resources. When water contaminates it ultimately effects on the health of human beings, fauna and flora.

In \textit{Indian Council for Enviro-Legal Action v. Union of India}\textsuperscript{41}, a public interest litigation was field by an environmentalist organization. This petition was not field for the issuance of any writ, order or direction against the Union of India, State Government or State Pollution Control Board concerned. But to compel them to perform their statutory duties on the ground that their failure to carry on such duties violated rights of the residents of affected area, which is guaranteed to them under article 21 of the Constitution.

The Court issued directions to the government for the enforcement and implementation of the laws to protect the fundamental right of life of the people, which is conferred to them.

\textsuperscript{41} [1996]3 SCC 212.
under article 21 of the Constitution. The Court further pointed out that even though, it is not the function of the Court to see the day-to-day enforcement of the law, that being the function of the executive, but because of the non-functioning of the enforcement agencies, the Courts as of necessity have had to pass orders directing the enforcement agencies to implement the law for the protection of the fundamental rights of the people.42

Water is essential component of life on the planet earth. Without it man can not survive for long. Therefore it is essential that it must be contamination free, because consumption of polluted water is an open invitation to various diseases. The Apex Court expressed the similar views in Narmada Bachao Andolan v. Union of India43. In this case the court held that right to water is a fundamental right under article 21 of the Constitution. Water is the basic need for the survival of human beings and is part of right to life and human rights as enshrined under article 21 of the Constitution and can be served only by providing source of water where there is none.

In Kamal Nagal Welfare Asson v. Government of A.P.44 the question involved was regarding a project of beautification and clearing of river bed area, which was aimed in larger interest of public and displacing a microscopic population, held to be valid and not violtive of people’s right under article 21, as the Government had already identified persons to be effected by implementation of the project and alternative arrangements had already been made to accommodate them at a place with full civil

42 Id. at 28.
44 AIR 2000 AP 132.
amenities, which includes proper sewage system, water supply etc.

The Apex Court once again reiterated, the right to healthy environment and sustainable development as fundamental human rights which implicit in the right to life in *A.P. Pollution Control Board (II) v. Prof. M.V. Nayudu*. In this case the Supreme Court held that section 19 of the Water [Prevention and Control of Pollution] Act, 1974 allows the State to restrict the application of Water Act, 1974 at a particular area, but it does not permit the State to allow an industry in any prohibited area which causes water pollution in that area, this will amount violation of article 21 of the Constitution.

The Court also made reference of the Conference on International Drinking Water Supply and Sanitation Decade, 1980. The Court further held that the United Nations also emphasized on the importance of purity of water in its November 1980 Declaration. Therefore, right to access to drinking water is fundamental to life and there is a duty on the State under article 21 to provide clean drinking water to its citizens.

The right to life and personal liberty also includes right to know. The people have right to information about the policies and decisions of government to know whether these policies etc effect negatively on their health or not. The Supreme Court also expressed the similar view in *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Bombay Pvt. Ltd.*. In this case the Court held that right to know emanates from the right to life. It

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46 Ibid.
47 AIR 1989 SC 190.
was observed by the Court that we must remember that the people at large have a right to know in order to be able to take part in participatory development in the industrial life and democracy. Right to know is a basic right to which citizens of free country aspire in broadening horizon of the right to life under article 21 of the Constitution. This right has reached new dimensions and urgency. It was further held by the Court that this right puts greater responsibility upon those who take upon the responsibility to inform. The strong link between article 21 of the Constitution and the right to know is evident in environmental matters where secret government decision may affect health, life and livelihood of the people.

In this case the Court further held that we may remember that the people at large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy. Right to knows is a basic right to which citizens of a free country aspire in the broadening horizon of the right to life in this age on our land under article 21 of the Constitution.48

To live in polluted environment means slow death. This amounts to deprivation of the right to life itself. Resultantly, it is a Constitutional mandate to the State to ensure for the people of India a clean environment.49

Thus, from the perusal of the trend of all above discussed cases it is crystal clear that there has been a new development of environmental jurisprudence in India and Right to wholesomeness of environment is considered as the fundamental

48 Ibid.
right under article 21, as without this, right to life and livelihood would become meaningless.

(d) **Right to Invoke Writ Jurisdiction**

One of the most innovative parts of the Constitution is that right to enforce the fundamental rights by moving the Supreme Court is itself a fundamental right under article 32 of the Constitution. High Courts have also power to issue writs under article 226 of the Constitution. Generally, environmental Law provides for a system of regulation by statutes. However, in India most of the environmental jurisprudence has been developed through writ jurisdiction. Judicial activism and the development of the concept of public interest litigation under the writ jurisdiction of the Supreme Court and the High Courts have brought a mutation change in procedural jurisdiction and it has played a pivotal role in developing and providing impetus to environmental jurisprudence with Human Rights approach. The writ remedy is preferred over tort action because it is relatively speedy, cheaper and provides direct approach to the higher judiciary.

Now the Supreme Court has accorded judicial recognition, to the right to a wholesome environment as being implicit on article 21, hence, a litigant may accordingly assert his right to a wholesome environment against State, by a writ petition either to the Supreme Court or to the High Court.52

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50 Article 32 (1) provides “The right to move the Supreme Court by appropriate proceedings for the enforcement of right conferred by part III is guaranteed”.
51 Supra Note 2 at 74.
The court depicted the importance of issuing writs over other judicial remedies in environment matters, for example in *Rajiv Ranjan Singh v. State of Bihar*.<sup>53</sup> In this case the High Court while laying emphasis on the importance of issuance of writ remedy, held that this remedy is preferred over tort action or public nuisance remedy because it is relatively speedy, cheaper and provides direct approach to the higher judiciary thereby reducing the chances of further appeals.

The Court further observed, that the relaxed rules of locus standi and evolution and recognition of epistolary jurisdiction by the Supreme Court and the High Courts have further ensured public participation in matters like environment protection.

In environmental matters a writ of mandamus would lie against a public authority to command action by it when the latter is vested with power and wrongfully refuses to exercise it. The writ can prove effective in securing the public authorities action to improve the urban environment, particularly in cases where the municipal authorities fail to construct sewers, drains, and clean streets and clear garbage.<sup>54</sup>

In *Rampal v. State of Rajasthan*<sup>55</sup> the Court considered question of issuing a writ of mandamus to Municipal Board to construct the sewers and drains for the discharge of domestic waste including dirty water as well as rain water. The brief facts of the case were that the petitioners were residents of Mundara Mohalla, of Mandal in Bhilwara district. There was a blind lane and common chowck in Mundara Mohalla, which was surrounded

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<sup>53</sup> AIR 1992 Pat. 86.
<sup>54</sup> Supra note 1, at 208-209.
<sup>55</sup> AIR 1981 Raj 121.
by houses. Water of the domestic use including dirty water from the houses of the Mohalla, and rain water used to collect in the chowk and because there was no drain for the discharge of the accumulated water, therefore, there was growth of moss and insects which posed threat of spread of epidemics. The petitioner filed writ before the High Court by praying to issue direction to the Municipal Board to bring suitable action against them who were duty bound under the Rajasthan Municipalities Act, to make reasonable provisions for clearing public streets, sewers and removing noxious vegetation sewers. The court issued writ of mandamus to the Municipal Board to construct sewage etc. and take proper care for the cleanliness of the area.

As we all are aware that in this materialistic world, everyone thinks about his or her own personal gains, nobody bothers what effect is would leave on others. To get some materialistic benefits people can go to any extent and do not mind even to harm fragile environment. For example usually waste water of tanneries is discharged into water resources, which contaminate water and poses health hazard to living organisms. If someone tries to stop the defaulters from doing so, they start agitations, sometimes they even harm environmentalists and social workers physically.

In Tarun Bharat Sangh v. Union of India, the Apex Court while exercising it’s powers under article 32 of the Constitution, directed to State Government to provide police protection to environmental activists against any physical threats by the vested interests.

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The Supreme Court has also encouraged ecologists and other social workers to come forward for the protection of natural sources by suitably rewarding them.

In M.C. Mehta v. Kamal Nath\textsuperscript{57}, the Supreme Court applied the Polluter Pays Principle; the court held that under article 32 of the Constitution the Apex Court can award damages in a writ petition to the petitioner. It was further held that, in addition to damages, 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. The Supreme Court imposed Rs. ten lac as exemplary damages on the respondent for the repair of river which was polluted due to the discharge of untreated effluents from the motel of respondent.

No doubt the courts encourage people to file suits against the culprits who harm our fragile ecology and also suitably awarding the environmentalists for pain taken by them. Some people file frivolous suits on false grounds, only to become popular by filling, environmental cases. A petition under 32 of the Constitution of India was filed on the ground that the Bokara river is getting polluted due to discharge of sludge by a nearby steel company. It was frivolous writ. Therefore, the Apex Court dismissed it and slapped cost of Rs. 5000/- on the petitioner.\textsuperscript{58}

In Chhetriya Pradushan Mukti Sangharsh Samiti v. State of U.P.\textsuperscript{59} In this case public interest litigation was filed by the petitioner organization by writing a letter to the Supreme Court, alleging environmental destruction by the Jhunjhunuwal oil mills

\textsuperscript{57} (2002) 3 SCC 653.
\textsuperscript{58} Subhash Kumar v. State of Bihar, (1991) 1 SCC 598.
\textsuperscript{59} (1990) 4 SCC 449.
in the historic town of Sarnath. The letter was treated as writ petition. The brief facts of the case were that the effluents of the oil mill were flown into water and land of the area. It was contended that the land became waste, crops withered, people suffered from T.B., jaundice and other epidemics. The respondent contended that the petitioner, Mr. S.R. Pandey was a blackmailer in the area. The company has already received the necessary environmental clearances for operating the mills. It was proved that, there was long history of enmity between the parties. Therefore, the court held that, it did not want to interfere in the complaint.

It was further held that action under Article 32 can be taken only on a petition by a genuinely public spirited person acting on behalf of society. While the court has a duty to enforce the fundamental rights, it must also ensure that there was no misuse of the rights.

The Supreme Court expressed the view that, while it is duty of the court to enforce fundamental rights, it is also the duty of the court to ensure that this weapon under article 32 of the Constitution should not be misused or permitted to be misused creating a bottleneck in the superior court preventing other genuine violation of fundamental rights which are considered by the court.

The judiciary in India is so enthusiastic, that it treats even a letter written to it, regarding the degradation of natural sources as writ petition. These days all the courts whether higher or lower are pile up with pending cases and it takes years to decide a case. The pollution problem effects the entire organism on the planet earth. Therefore, matters relating to environmental pollution
requires speedy disposal. To achieve this goal establishment of separate environmental courts are need of the time, the similar view was expressed by the Supreme Court in *M.C. Mehta v. Union of India*[^60]. The court held that the cases involving issues of environmental pollution, ecological destruction and conflict over natural resources are increasing day by day for adjudication, these cases involve assessment and evolution of scientific and technical data. To solve this problem the Apex Court suggested that the setting up of Environmental Courts on the regional basis with one professional judge and two experts drawn from ecological science research group keeping in view the nature of the case and expertise required for its adjudication. The court held, that appeal against the decision of the Environment Court would lie to the Supreme Court. The Supreme Court again reiterated the need for creating environmental courts in *Indian Council for Enviro legal Action v. Union of India*[^61], the Supreme Court had the view that environmental matters should first be raised before the High Court having the territorial jurisdiction over the area in question. Because the High Court is in a better position to monitor the case.[^62]

In *Vellore Citizens Welfare Forum v. Union of India*,[^63] the Apex court asked all the High courts in the country to constitute a special bench, Green Bench to monitor and deal with cases of environmental matters.

In cases of degradation of natural resources like water, soil, air etc. the writ remedy is more advantageous than the civil suits.

[^60]: AIR 1987 SC 965.
[^61]: AIR 1996 SC 1069.
[^63]: (1996) 5 SCC 647.
Because the writ remedy is speedy, cheap and less technical and matters relating to environmental pollution also require speedy restoration of its purity, which can be availed through Articles 32 and 226 of the Constitution.

B. Directive Principles:

The Directive Principles of the State policy are contained in part IV of the Constitution. It sets out the aims and objectives to be taken up by the States in the governance of the country. These principles are directions to the State, to guide the destiny of the nation by obligating three wings of the State i.e. legislature, judiciary and executive to implement these principles.

Article 47 of the Constitution is one of the directive principles of the State policy and it provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties. Hence, the improvement of public health will also include the protection and improvement of environment without which public health cannot be protected.

The health can be improved only if our natural resources like water etc. would be contamination free because food and other eatables etc. whatever we take for the growth of our body contains water, when the primary source e.g. water and air itself are polluted, how can we think to improve the health of people.

In the year 1976, by 42nd amendment a new article 48-A to the directive principles of the State policy, which specifically deals with protection and improvement of environment was added. It provides that the State shall endeavour to protect and improve

64 Attakoya Thangal v. Union of India, 1990 KLT 580.
the environment and to safeguard the forests and wild life of the country.65

Thus, the Indian Constitution has become one of the rare constitution of the world where specific provisions were incorporated in the Suprema Lex putting obligations on the “State” as well as “Citizens” to “protect and improve” the environment. This certainty is a positive development of Indian Law.66

Though formally these Directive Principles were added in the Constitution just to consult them in laying any policy etc. by the State. As in view of article 137 of the Constitution, the Court may not be able to actively enforce the directive principles by compelling the State to apply them in the making of law. But with the pace of time, it has taken new shape and courts are very much relying on them and emphasizing to give proper status to the directive principles specially when matter in question is related to the environment. The directive principles now stand elevated to inalienable fundamental human rights. Even they are justiciable by themselves.67 In India the judicial attitude in protecting and improving the environment provides a testimony of the fact that directive principles are not mere guiding principles of policy, but they have to be given effect. Sachida Nand Pandey v. State of West Bengal,68 the Supreme Court relying upon the Constitutional directives concerning protection of environment observed whenever a problem of ecology is brought before the

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65 Constitution of India, 1950.  
66 Supra note 2, at 44.  
court the court is bound to bear in mind Article 48-A of the constitution and will give full effect to it.

In *T. Damodhar Rao v. S.O. Municipal Corporation Hyderabad*\(^69\) it was held by the Andhra Pradesh High Court that in view of Article 48-A of the constitution, it is clear that protection of environment is not only duty of every citizen but it is also the obligation of the State and the courts.

In *Kinkri Devi v. State*\(^70\), there is a Constitutional point in Article 48A to the State e.g. state has not only to protect but also to improve the ecology and to preserve the flora, fauna, the rivers, lakes and all other water resources of the country. The neglect or failure to abide by the pointer or to perform the duty is nothing short of a betrayal of the fundamental law, which the state is bound to uphold and maintain.

If we take, social justice into consideration after analyzing it fully, we will get real idea behind it, as we all are aware that social justice means upliftment, care etc of the society in every field which effects it. Now, as environmental pollution is threatening the society, therefore, it also covers under it, social justice in its holistic sweep, takes into human account the destruction of the ecology.\(^71\)

The word protects and improve which occurs in directive principles, are positive in nature, which direct the State to take positive steps to improve and maintain the quality of nature.

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\(^{69}\) AIR 1987 AP 171.

\(^{70}\) AIR 1988 HP 4.

C. Fundamental Duties

In India, the blotch of exploitative development boom had its disastrous effect on environment, it was so, because when we were making towards progress we ignored our nature fully and did not care a bit, which resulted in destruction of prime sources of nature e.g. water, air etc. and it has taken such shape, which is injurious not only to human beings, but also all the lively and non-lively things present on the earth are badly effected from the menance of pollution.

Due to such devastating condition of nature, in the year 1976 new part IV-A was inserted into the Constitution. this part was added on the recommendations of the Swarn Singh Committee bringing the Constitution of India in line with article 29(1) of the Universal Declaration of Human Rights. It consists of only one article 51-A. It is universal truth, that rights and duties are interlinked, without duties rights have no significance. In India this notion is prevailing from the ancient times. Indian scriptures laid emphasis on the individual’s kartavya, that is to fulfill obligations towards society and the nation.

According to Gita, “one should continue with one’s karma, without caring for it’s fruits.” It is clear from the above contention that in India fundamental duties are not new and in the year 1976, only Constitutional sanction was given to it. Article 51 (A) (g) specifically deals with fundamental duty with respect to environment. It provides: It shall be the duty of every citizen of

72 Article 29 (1) of the Universal Declaration of Human Rights provides: “Everyone has duties to the community in which alone the free and full development of his personality is possible”.

73 Shri Madbhagvad Gita, Karamyog Third Canto, 59 to 75.
India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.

Article 51-A (g) casts a duty on every citizen to help in the preservation of natural environment. It enjoins upon every citizen a fortiri, upon every instrumentality like the executive. 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.74

Although, these duties like Directive Principles are not enforceable in courts, but merely directives to the citizens. But now courts have taken the initiative to implement them. It is submitted that, if the State and citizens perform their respective duties, then the problem of pollution can be controlled to a great extent. The fundamental duties are intended to promote peoples participation in restructuring and building a welfare society. The protection of environment is a matter of constitutional priority. The problem of pollution is the concern of every citizen. Neglect of it is an invitation of disaster.75

Article 51-A(g) provides that it is fundamental duty of every citizen to protect and improve “natural environment”. But in the present days the pollution is caused not only by exploiting the “natural environment” but otherwise also. In modern industrialized civilization such a concept may seem to be

75 V. Lakshmipathi v. State, AIR 1992 Kant. 57.

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misnomer. Nature has given us the gift of pollution free environment. The fundamental duty imposed on every citizen is not only to “protect” the environment from any kind of pollution but also to “improve” the quality of the environment if it has been polluted. Thus, the underlines emphasis of this fundamental duty is that every citizen has a duty to make an endeavour to preserve the environment in the same way as nature has gifted it to all of us.76

In Abhilash Textile v. Rajkot Municipal Corporation77, the court held that due to discharge of effluents water on public road or in the public drainage system, the entire environment of the locality gets polluted. The provisions regarding fundamental duties of the citizens contained in Article 51-A (g) of the Constitution enjoins upon all the citizens to protect and improve the natural environment. In Goa Foundation v. State of Goa78 the court held that under article 51-A (g) protection of natural sources including rivers, forests, lakes is basic duty of all the citizens, therefore, any registered society can file public interest litigation to prevent the ecological degradation. The court further observed that the petitioner have a locus standi to move to the court to prevent ecological degradation and to formulate and implement programmes for rehabilitation of environment and to restore ecological balance.

To implement Article 51-A (g) of the Constitution, it is the duty of the Central Government to direct all the educational institutions, throughout India to teach at least in a week lessons

76 Supra note 2 at 41.
78 AIR 2001 Bom 319.
relating to protection and the improvement of the natural environment, including lakes, rivers in the first ten classes. The true scope of article 51 A (g) has been best explained by Court in \textit{L.K. Koolwal v. State}. The High Court held that, the municipalities are bound to take initiative for the cleanliness of streets, sewers etc. of their area. The municipal authority under the Rajasthan Municipalities Act, 1959 was charged with primary duty to clean sewers, public streets and all other spaces, which is not private property, but which are open to the enjoyment of public, removing of noxious vegetation and all public nuisance, and to remove fills, odour, rubbish, night soil or any other noxious or offensive matter.

The court further held that the Municipality has failed to discharge its primary duty resulting in the acute sanitation problems in the city of Jaipur, which is hazardous to the life of citizens.

The High court of Rajasthan further held that, ordinarily article 51-A (g) deems to be the duty of the citizens, but in fact it is right of the citizens as it creates the right in favour of citizens to move to the court to see that the State performs its duties faithfully and whether the obligatory and primary duties are performed in accordance with the law of the land? Omissions or commissions are brought to the notice of the court by the citizen and thus, article 51-A (g) gives a right to the citizens to move the court for the enforcement of the duty cast on State, it's

\textsuperscript{80} \textit{AIR} 1988, Raj.2.
instrumentalities, agencies, local bodies, departments and statutory authorities created under the particular law of the State.

As we all are aware, for the enjoyment of pollution free natural resources e.g. water, air etc. it is necessary, that the rights and duties provided to people should go side by side. In other words, if the citizens have fundamental right to live in pollution free environment, then it is also their duty to maintain and protect the natural resources from degradation. The similar view was expressed by the court in *M.C. Mehta v. State.* In this case the High Court held that, the right and duty co-exists. There cannot be any duty without any right. It was further observed that, insanitation leads to slow poisoning and adversely affects the life of the citizens and hence it falls within the purview of article 21 of the Constitution. Therefore, it is the duty of every citizen to see that rights which he has acquired under the Constitution are fulfilled.

From the above discussed, it is clear that if duties enshrined under Article 51-A (g) of the Constitution are properly discharged, then the menance of environment pollution can be controlled to a great extent.

Therefore, for the protection and maintenance of water sources the legislature, courts, NGOs and general masses should take such steps which help in improving the quality of water. Our Constitution has included provisions for the control of biggest problem of the day e.g. environmental pollution, now it depends on us how we implement them positively or negatively. In India

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81 AIR 1992 Ori. 225.
Government is making serious attempts to control the environmental pollution and has passed a number of legislations on the prevention and control of the environmental pollution.