ENVIRONMENT ISSUES AND THE CONSTITUTIONAL RESPONSE

The Constitution of India came into force on 26th January, 1950. It is the supreme law of India laying down the framework for defining the fundamental principles, determining the structure, procedures, powers and duties of the government, elucidating the fundamental rights, directive principles and fundamental duties of the citizens of India. It declares the Union of India to be a sovereign, socialist, secular, democratic republic, assuring its citizens of justice, equality, and liberty and to promote among them all fraternity.¹

The Constitution of India is one of the few constitutions in the world which contain specific provisions for the protection of the environment. The Preamble of the Constitution of India itself, talks about the environment. In the Preamble, it reads, “We the people of India” have solemnly resolved to constitute India into, inter alia a “socialist state”. The problem of environment’s pollution is a social problem rather than an individual problem. Therefore, the State is under the obligation to pay more attention to social problems and march towards the avowed aim of a just social order.² The inclusion of the environmental issues in the chapters of fundamental rights, the fundamental duties and directive principles of state policy of the Constitution, all illustrated the fact that our nation is committed to the protection of environment. The involvement of judiciary in the area, further strengthened its national commitment. Originally, the Constitution did not provide provisions for environmental protection except for a few articles like 47 and 48 in the Directive Principles of State Policy. These two Articles direct the State to raise the level of nutrition and the standard of living; and to improve public health and; organisation of agriculture and animal husbandry.³

Gradually, it was realised that environment is fundamental to the survival and development of man and the nation as a whole. If the environment of a nation is
degraded and polluted, so will be of the nation. Further, the Stockholm Conference on Human and Environment in 1972, the first of its kind at the international level, realised the need of environmental protection commitment. It clarifies that man has the fundamental right to freedom, equality and adequate conditions of life in an environment of quality that permits a life of dignity and well-being. As a result, in 1976, when the forty-second amendment of the Constitution was passed, it provided specific provisions for the protection of the environment and its improvements, in the form of Fundamental Duty and Directive Principles of State Policy. Further, the enactment of Environment (Protection) Act in 1986 was a major and comprehensive step towards the protection of environment.

1. ENVIRONMENTAL LEGISLATIVE STRUCTURE

The Constitution provides for the separation of powers between the Union and the States. It enumerates the powers of the Union and State governments in three lists, namely; Union List, State List and Concurrent List. Part XI (Articles 245-263) of the Constitution governs the legislative and administrative relations between the Union and the States. Article 246 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 of the Constitution. Under Article 246, the Union government has the exclusive power to make laws for the whole or any part of India with respect to matters enumerated in the Union List, containing 97 subjects. Further, the Article provides that the legislature of the State has the exclusive power to make laws for such State or any part thereof with respect to matters enumerated in the State List which comprises 66 subjects. Moreover, the Article provides that the Parliament and the State legislature have the power to make laws with respect to any of the matters enumerated in the Concurrent List. Article 249 provides that the Parliament has the power to make laws with respect to matters enumerated in State Lists under certain conditions for the national interest. The important environmental legislations passed by the Parliament under Article 249 of the Constitution are The Water (Prevention and Control of Pollution) Act, 1974; The Air (Prevention and Control of Pollution) Act, 1974; The Air (Prevention and Control of Pollution) Act, 1981; and the Environment (Protection) Act, 1986. In total, there are about 200 central and state legislations on environmental protection.
In context of environmental issues, the Union list contains subjects like:

- Atomic energy and mineral resources necessary for its production.
- United Nations.
- Participation in international conferences, associations and other bodies and implementing of decisions made thereat.
- Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.
- Foreign jurisdiction.
- Piracies and crimes committed on the high seas or in the air; offences against the law of nations committed on land or the high seas or in the air.
- Shipping and navigation on inland waterways, declared by Parliament by law to be national waterways, as regards mechanically propelled vessels; the rule of the road on such waterways, Property of the Union and the revenue therefrom, but as regards property situated in a State.
- Airways; aircraft and air navigation; provision of aerodromes; regulation and organisation of air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by States and other agencies.
- Trade and commerce with foreign countries; import and export across customs frontiers; definition of customs frontiers.
- Establishment of standards of weights and measures.
- Establishment of standards of quality for goods to be exported out of India or transported from one State to another.
- Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest.
• Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

• Regulation of labour and safety in mines and oilfields.

• Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

• Fishing and fisheries beyond territorial waters.

• Union agencies and institutions for-
  a. professional, vocational or technical training, including the training of police officers; or
  b. (b) the promotion of special studies or research; or
  c. (c) scientific or technical assistance in the investigation or detection of crime.

• The Survey of India, the Geological, Botanical, Zoological and Anthropological Surveys of India; Meteorological organisations.

• Offences against laws with respect to any of the matters in this list.

• Inquiries, surveys and statistics for the purpose of any of the matters in this list, respect to any of the matters in this list; admiralty jurisdiction.

Relatively, the following subjects related to environmental issues are contained in the State list:

• Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining, settlement authorities and other local authorities for the purpose of local self-government or village administration.

• Public health and sanitation; hospitals and dispensaries.
• Libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records other than those [declared by or under law made by Parliament] to be of national importance.

• Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; vehicles other than mechanically propelled vehicles.

• Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.

• Preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice.

• Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List I.

• Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.

• Fisheries.

• Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.

• Industries subject to the provisions of [entries 7 and 52] of List I.

• Gas and gas-works.

• Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.
• Taxes on lands and buildings.
• Offences against laws with respect to any of the matters in this List.

Under the Concurrent list, the Parliament and the legislatures of States have overlapping and shared jurisdictions. It contains the following subjects in reference to environmental issues:10

• Evidence and oaths; recognition of laws, public acts and records, and judicial proceedings.
• Prevention of cruelty to animals.
• Forests and protection of wild animals and birds.
• Economic and social planning.
• Trade and commerce in, and the production, supply and distribution of:
  a. the products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;
  b. foodstuffs, including edible oilseeds and oils;
  c. cattle fodder, including oilcakes and other concentrates;
  d. raw cotton, whether ginned or unginned, and cotton seed; and
  e. raw jute.
• Factories.
• Boilers.
• Archaeological sites and remains other than those [declared by or under law made by Parliament] to be of national importance.
• Inquiries and statistics for the purposes of any of the matters specified in List II or List III.
• Custody, management and disposal of property (including agricultural land) declared by law to be evacuee property.
These divisions of environmental issues among different lists are according to the effectiveness of policies. Some environmental problems like forest and wildlife can be dealt by the central government while others, such as, sanitation and waste disposal can be dealt more effectively at the local level and are, thus, under the State jurisdiction. The subjects in these lists were not included from the beginning. It was through a number of amendments that various subjects were added gradually.

**International Obligations:**

Article 253 of the Constitution of India states that:

"Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body."

It is under this Article of the Constitution that it becomes necessary for the government of India to take environmental measures in reference to international treaties, agreements and conventions or bodies. Accordingly, the Water (Prevention and Control of Pollution) Act, 1974; the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 were enacted under this Article of the Constitution. These Acts were, thus, enacted to implement the decisions reached at the United Nations Conference on Human Environment held at Stockholm in 1972. For instance, the preamble to the Environment (Protection) Act of 1986 provides:

*Whereas the decisions were taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, to take appropriate steps for the protection and improvement of human environment;*

*And whereas it is considered necessary further to implement the decisions aforesaid in so far as they relate to the protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property;*
The Supreme Court in the case of *Vellore Citizen’s Welfare vs. Union of India* held that it is almost an accepted proposition of law that the rules of customary international law which are not contrary to the municipal law shall deemed to have been incorporated in the domestic law and shall be followed by the courts of India.\(^\text{12}\)

Apart from this, there are numerous treaties and agreements of environmental nature that India has to obligate. Under different treaties, obligations vary, depending on the treaty itself. The factors that affect the obligations of the nation to a treaty are:\(^\text{13}\)

i. The capabilities and staff of an international institution charged with coordinating national compliance efforts, if there is one;

ii. The willingness of other state parties to enforce or comply with the treaty;

iii. The political agenda of the government and popular support;

iv. Trade and diplomatic pressures brought to bear by other countries; and

v. Sometimes, judiciary or NGO involvement through court cases and publicity.

India, like other nations, obligated herself either as a Contracting Party (CP) by ratifying treaties or as a Signatory (S) by officially signing the treaties and agreeing to carry out provisions of various treaties. In total, India has obligated herself to the following treaties in terms of environment:\(^\text{14}\)

i. The Antarctica Treaty (Washington, 1959)

ii. Convention on Wetlands of International Importance, Especially as Waterfowl Habitat (Ramsar, 1971)

iii. Convention Concerning the Protection of the World Cultural and Natural Heritage (Paris, 1972)


ix. Convention for the Protection of the Ozone Layer (Vienna, 1985)

x. Protocol on Substances that Deplete the Ozone Layer (Montreal, 1987)

xi. Amendments to the Protocol on Substances That Deplete the Ozone Layer (London, 1990)


xiii. United Nations Framework Convention on Climate Change (Rio de Janeiro, 1992)


xv. Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (Paris, 1994)


xvii. Protocol on Environmental Protection to the Antarctica Treaty (Madrid, 1991)

Further, Article 262 of the Constitution deals with adjudication of disputes relating to matters of inter-state rivers, or river valleys and reads as under:

(i) Parliament may by law provide for adjudication on any dispute or complaint with respect to the use, distribution or control of the waters of, or in any inter-state river or river valley.

(ii) Notwithstanding anything in this Constitution, parliament may by law provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of any such dispute or complaint as is referred to in Clause (1)."
The Union government has enacted Inter-State Water Dispute Act, 1956 and River Boards Act, 1956 under Article 262 and Entry 56 of List I of the Constitution.\(^\text{16}\)

2. **FUNDAMENTAL RIGHTS**

The environmental dimension of human rights was recognised at the international level in 1968 when the United Nations General Assembly passed a resolution identifying the relationship between the quality of the human environment and the enjoyment of basic rights. This was followed by the landmark Stockholm Conference in 1972.\(^\text{17}\)

The Principle 1 of the Stockholm Declaration states “the fundamental right (for man) to freedom, equality, and adequate conditions of life, in an environment of quality that permits a life of dignity and well-being…” The United Nations General Assembly, in its Resolution 45/94, categorically recognised that all individuals are entitled to healthy environment. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights recognize “an inherent right to life” of every human being through “the improvement of all aspects of environmental and industrial hygiene.” The Economic, Social and Cultural Rights also recognise the importance of a healthy environment, decent living conditions and health. In 1981 The African Charter of Human and People's Rights was adopted, of which Article 24 recognises that “all peoples shall have the right to a general satisfactory environment favorable to their development.” Further in Europe, the Organisation of Economic and Cooperation and Development (OECD), the United Nations Economic Commission for Europe and the Organisation of American States, all directly and indirectly acknowledged the human right to a clean environment.\(^\text{18}\) In 1990, the United Nations General Assembly declared that “all individuals are entitled to live in an environment adequate for their health and well-being.” The United Nations Commission on Human Rights also adopted a resolution in 1990, entitled ‘Human Rights and Environment’, which again reaffirmed the relationship between preservation of environment and the promotion of human rights.\(^\text{19}\)

Besides these international organisations, few countries have also adopted the environment rights in their constitutions. For instance, Section 20 of the Constitution
of Finland prescribes that while protection of the nature is the responsibility of everyone, the public authorities shall endeavour to guarantee for everyone the right to a healthy environment. Article 45 of the Constitution of Spain also sets out a right to an adequate environment. According to Article 9 and 66 of the Constitution of Portugal, effective environmental protection is a fundamental task of the State, but also a fundamental right. The Constitution of Greece also states that environmental protection is a right of everyone.

By associating the environment issues with the human rights at the international level, the Indian judiciary also interpreted the Articles of the Constitution in this sphere. In India, the fundamental rights of the citizens are discussed in the Part III of the Constitution from Articles 12 to 35. The following Articles of the Constitution, directly or indirectly, deal with environmental protection.

**Article 14** says that "State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

Thus, the Article guarantees that the laws of the government of India will provide every person with equality including fairness, justice and reasonableness. In context of environment, the laws of the country should provide every person with equally healthy environment. The government has no right to take away the rights of a person to live in a polluted-free environment. The concept of intergenerational equity can also be covered in this Article, which states that every human of every generation has the right to benefit from the nature and its components.

**Article 15(2) (b)** says that “No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them be subjected to any disability, liability, restriction or condition with regard to: the use of wells, bathing ghats, roads and places of public resort, maintained wholly or partly out of State funds or dedicated to the use of general public.”

This Article guarantees that every person, irrespective of his religion, race, caste, sex, place of birth, etc has the right to use the natural resources of the nation as well as the resources of human environment or ‘inbuilt environment.’ Everyone in the country has the right to use the resources and produce, from the environment according to the need. No person can be restrained from using the adequate resources of the nation.
**Article 19 (1) (a) and 19 (1) (e)** says “All citizens shall have the right to freedom of speech and expression and to form associations or unions.”

Under this Article every citizen has the right to express and discuss about the state of the environment and its degradation and to form associations and organisations for the protection of the environment. It is under this Article, that in India, number of NGOs have been formed for the environmental protection such as; Centre for Science and Environment (CSE), Bombay Natural History Society, Friends of the Doon, Indian Association for Environmental Management (IAEM), Dasholi Gram Swarajya Mandal, Green Future Foundation, Narmada Bachao Andolan, Nilgiri Wildlife and Environment Association, The Energy and Resources Institute (TERI), Kalpavriksh, and so on. Apart from these, some environmental international organisations also work in India at the local level, independently or in collaboration with some other organisations like WWF, Greenpeace etc. Also a number of fortnightly, monthly, quarterly and annual newsletters, journals and magazines like; Down to Earth, Journal of Education for Sustainable Development (JESD), International Journal of Ecology and Environmental Sciences etc. are published to inform citizens about the condition of the environment.

The other aspect of the right under this Article in reference to environment is that no one has the right to express or form associations or unions of any matter in such a way that peace and tranquility of the neighbourhood is disturbed. A number of rulings have been provided by the judiciary from time to time to give guidelines about the extent of this right. This right has also caused pollution, in particular, noise pollution. In Birangana Religious Society vs. Orissa case (1996 100 Cal WN 617) the Court upheld the power of the Sub-Divisional Magistrate to direct a religious organisation against the use of microphones, which might hinder the rights of citizens to lead a life of peace and tranquility. Likewise, the Kerala High Court asked a Christian denomination not to use loudspeakers on the ground that it would disrupt the law and order and it might be inconvenient for the other groups of citizens (P A Jacob v. S. V. Kottayam, AIR 1993 Ker 1). Rejecting the petitioner’s claim of freedom of speech and expression, the Court held that recognition of the right of speech and expression is a recognition accorded to the human faculty. A right belongs to human personality and not to a mechanical device. 23
In a series of judgments, the Supreme Court of India has held that the disclosure of information about government and the right to know about government flows from the guarantee of free speech and expression in Article 19 (1) (a) of the Constitution of India. In 1982, ‘S.P. Gupta v. President of India’ the Court observed that:

“This is the new democratic culture of an open society towards which every democracy is moving and our country should be no exception. The concept of an open government is the direct emanation from the right to know which seems to be implicit in the free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosure of information in regard to the functioning of government must be the rule, and secrecy an exception justified only where the strictest requirement of public interest so demands. The approach of the court must be to attenuate the area of secrecy as much as possible consistent with the requirement of public interest, bearing in mind all the time that disclosure also serves an important aspect of public interest.”

Similarly, in a case that involved rejection of the demands of an environmental action group to access municipal records to examine the legality of certain actions of the Pune Cantonment Board, the Bombay High Court held that the right to know was implicit in the right of free speech and expression. As such, disclosures of information as to the functioning of the government should be the norm and secrecy an exception justified only where the strictest requirement of public interest so demanded, it opined.

However, with the passing of the Right to Information Act, 2005, right to information has been given the status of a fundamental right under Article 19 (1) of the Constitution. Every citizen has the right to know how the government works; what role it plays; what are its powers and functions; how actions are taken, and on what grounds; and so on. Every person or group including environmental groups can get facts about the environmental details like decision-making and implementation of policies regarding development projects, the pollution of any area, crisis of resources, environmental costs of dams and factories, financial cost of environmental projects and plans, proposed amendments of ministries, government response to environmental policies and many more. This right has become a prominent means to collect information about environmental issues. Many cases are
coming up regarding environment. It was found that pertaining to environment, maximum queries i.e. 125,418 were about the Urban Development Department in 2009. Moreover, the government even suggested United Nations Framework Convention on Climate Change which is charged with the credibility and accountability to the Intergovernmental Panel for Climate Change (IPCC) to introduce ‘Right to Information’ to its system.

**Article 19 (1) g and 19 (6)** says that “All citizens shall have the right to practise any profession, or to carry on any occupation, trade or business.” This article provides the freedom of occupation and profession but if the industry or any other activity is degrading or polluting the environment including water, air, soil and others, it can be restrained reasonably in the public interest under 19(6). In the *Godham Construction Co. vs. Amulya Krishna Ghose* case (AIR 968 Cal 91) the court held that a person causing noise can be restrained by injunction, even though that person was causing noise in the course of conducting his business.

**Article 21** says “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

The Supreme Court of India has widened the scope of Article 21 by stipulating that clean environment is essential for human survival and thus is a fundamental right. From time to time, in the number of cases, the Supreme Court has held that the right to enjoyment of a pollution free environment can be conferred as right to life under Article 21. In the *Subhash Kumar v. State of Bihar* case, the Supreme Court observed that:

“Right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has the right to have recourse to Article 32 of the Constitution.”

**Article 32(1)** says “The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.”
**Article 32(2)** says “The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.”

Ultimately these Constitutional remedies give authority to the Supreme Court to directly intervene for the protection of the environment. The Maneka Gandhi’s case (AIR 1978 Supreme Court 597) revolutionized the scope of the Article 21 of the Constitution i.e. right to life with the involvement of the scope of environmental protection.

Thus, the Supreme Court of India gets the acclaim for the foundation of environmental rights and to enforce them as fundamental rights. There is no direct articulation of the Right to Environment anywhere in the Constitution or, for that matter, in any of the laws concerning environmental management in India. But this has been seized by activist lawyers, motivating the courts to find and construct environmental rights from the available legal material. Article 226 of the Constitution provides High Court with the power to issue certain writs. It states that:

> “Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.”

### 3. DIRECTIVE PRINCIPLES OF STATE POLICY

The duties of the state governments in the context of environment protection have also been discussed at the international level. Article 30 of the Charter of Economic Rights and Duties of States of 1974 states:

> “The protection, preservation and enhancement of the environment for the present and future generations is the responsibility of all States. All States shall endeavour to establish their own environment and development
policies in conformity with such responsibility. The environmental policies of all States should enhance and not adversely affect the present and future development potential of developing countries. All States have the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction. All States should co-operate in evolving international norms and regulations in the field of the environment.”

Apart from this, a number of environmental treaties, protocols and agreements made at the international level by different nations, calls upon the government of the nations to take measures for environment protection. Therefore, the Government of India included this duty in the Part IV of the Constitution i.e. from Article 39 to Article 43 which deals with the Directive Principle of State Policy. These are the guidelines to be considered while framing the laws and policies by the Government of India including state and local governments. These are not enforceable by the courts but are necessary to establish a just society. They have been declared to be fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws. The following Articles under the Directive Principles of State Policy can be considered to be relevant for the protection of the environment.

**Article 38** states “State shall strive to promote the welfare of the people.”

Since protection of the environment from degradation is for the welfare of the people, therefore this Article promotes the protection of the environment.

**Article 39 (b)** says “The State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good.”

Under this Article, there is provision for the equal control and distribution of the natural resources. No one has the right for example, to own a common well of a village. Everyone has the authority to use the water of the well.

**Article 39 (c)** says “The State shall, in particular, direct its policy towards securing that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;”
Under this Article the state should take care that the economic system should not cause harm to the common people. This includes the examples of mining, industries and factories causing pollution and degrading the environment and health of the people. Also, in context of environment, it can be said that the state should not be involved in economic activities that lead to unsustainable exploitation of resources.

**Article 47** says “The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption, except for medicinal purposes, of intoxicating drinks and of drugs which are injurious to health.”

This Article states that the government should provide provisions for the nutrition, good health and adequate standard of living of the people. For good health, it is necessary that the environment should also be in good condition. Even the Supreme Court in *Municipal Council, Ratlam vs. Vardhichand* stressed that the State will realize that Article 47 makes it a paramount principle of governance that are steps taken for the improvement of public health as amongst its primary duties.  

**Article 48** says “The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.”

This Article provides protection and preservation of the animals. It also provides for the increase in the production of agriculture and animal husbandry in order to feed the population.

**Article 48 A** says “The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.”

This is the principal Article under the Directive Principles of State Policy for the protection of the environment in specific forests and wildlife. This Article was added with the Forty-Second Amendment of the Constitution in 1976 (w. e. f. 3-1-1977)

**Article 49** says “It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, [declared by or under law made by
Parliament] to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.”

This Article states that the government should protect even the inbuilt environment of the man including monuments. It is under this Article of the Constitution the government has been taking steps to protect the Taj Mahal.

**Article 51(a)** says “The State shall endeavour to promote international peace and security.”

**Article 51(c)** says “The State shall endeavour to foster respect for international law and treaty obligations in the dealings of organized peoples with one another.”

Under these two Articles the state has to oblige the international treaties, peace and security regarding the environment. The Bangladesh security conflict case can be dealt under this provision.

These directive principles of state policy lack judicial sanction, but the real purpose behind these sanctions is political in nature and not legal. As they intended to establish a welfare state, no democratically elected government can ignore them in view of erosion of public support. Dr. Ambedkar had rightly observed in the Constituent Assembly, “If any government ignores them, they will certainly have to answer for them before the electorate at the election time.” Also, noted Constitutional expert, D.D. Basu, while recognising the political sanctions behind these principles, says, “It would also be a patent weapon at the hands of the opposition to discredit the government on the ground that any of its executive actions or legislative Acts is opposed to the Directive Principles.”

However, in India, political parties have not still paid much attention to the field of environmental protection. They have only talked about environment protection but did nothing practically. During the sixth general election, the Congress (I) party expressed deep concern at the depletion of the wildlife and forests. It stated “Projects which bring economic benefits must be so planned as to preserve and enhance our national wealth, our flora and fauna.” The Lok Dal stated that it “will pursue a vigorous policy of protecting the environment.” Similar statements were also expressed by Janata Party and the Indian National Congress (U). But the successive governments promoted only increased production at the cost of
environmental protection. The Congress Party sponsored most of the environmental policies, but it also catered to the interest of big business at the expense of environmental protection. Also, the United Front has tended to target only big business rather than small businesses. The BJP has explicitly favoured business interests over environmental concerns.\(^\text{34}\)

During the elections in 2004, the Election Commission appealed to political parties to avoid using plastics during the election campaign. It also banned the use of live birds and animals by political parties who have been allotted these symbols and also wanted to control any kind of noise pollution in the name of campaigning. The Commission further reminded of a standing order to prevent defacing of any property by pasting posters, writing slogans and drawing symbols.\(^\text{35}\) However, in spite of these reminders, the political parties took no measures to prevent environmental degradation.\(^\text{36}\) Nevertheless, recently one of India’s leading environmental crusaders named Subhash Dutta has planned to launch India’s first ‘Green Party’ on the lines of political formations in Germany, Australia, the US and the UK that have environment protection, sustainable growth and inclusive development at their core.\(^\text{37}\)

4. **FUNDAMENTAL DUTIES**

Our rights need to confirm our duties. All religions of the world stress upon the individual’s responsible behaviour towards the environment; therefore everyone on this planet should pay an obligation to sustain our natural resources. For instance, Hindu religion shows concern in a number of ways for nature. Islam also guides the Muslims and says “humanity has been given the guardianship over God’s heaven and earth, but no outright ownership”.\(^\text{38}\) Recently, in 2009, on Annual World Day of Peace, the Pope of the Roman Catholic Church also talked about the moral duty of the people to protect environment, particularly the rich countries. He said, "Our present crises -- be they economic, food-related, environmental or social -- are ultimately also moral crises, and all of them are interrelated." He called on all people to "move beyond a purely consumerist mentality" so that they could "rethink the path which we are traveling together" and adapt "a lifestyle marked by sobriety and solidarity" between the haves and the have nots. Further, he also said that the
international community and governments had a moral duty to "send the right signals" to effectively combat misuse of the environment.\(^{39}\)

Professor Dwivedi tells that “the role of a code is to provide incentives so that individuals may act in a way which is conducive, not only to their self-preservation, but also to the well-being of the environment which sustains them. Such inner incentives become necessary when the external inducements, in the form of government directives, laws, or regulations are either unenforceable or not altogether workable. Another function of the code is to act as adaptive instrument that encourages our obligation towards nature, which is seen as provider and sustainer of our life system.”\(^{40}\)

The United Nations Conference on Human Environment 1972 also recognised the duties of the people for environmental protection, apart from the fundamental rights. However, these declarations recognised a sense of environmental ethics rather than environmental duties. The Principle I of the Declaration says

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...he bears a solemn responsibility to protect and improve the environment for present and future generations.
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Further, the Principle 4 says

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Man has a special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat...
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The first draft of the report on the World Conservation Strategy for the 1990s also discussed this issue widely:

a) People should respect nature, like all creatures we are an integral part of nature as well as users and consumers of nature

b) Every life form is unique and warrants respect regardless of its worth to people

c) All persons should ensure the means of survival of all other life forms; and should not knowingly cause the extinction of other species;

d) People should treat all creatures humanely, and protect them from cruelty and avoidable suffering.\(^{43}\)
All these led the Government of India to adopt the protection of environment as the fundamental duty of a citizen of India. The fundamental duties of the citizens of India form the Part IV A of the Constitution and were included by the Constitution (Forty-second Amendment) Act, 1976. These duties are the moral obligations to be followed by the citizens of India in order to uphold the unity of the nation. Article 51A (G) of the fundamental duties is relevant to the protection of the environment. It states “to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.” Apart from this, Part (i) of the Article also states to protect public property, thus including the man-built environment. It stipulates “to safeguard public property and to abjure violence.” Furthermore, in the L.K. Koolwal vs. State of Rajasthan case, the court observed:

“Right and duty co-exists. There cannot be any right without any duty and there cannot be any duty without any right...We can call Article 51A ordinarily as the duty of the citizens, but in fact it is the right of the citizens as it creates the right in favour of the citizen to move to the Court to see that the State performs its duties faithfully and the obligatory and primary duties are performed in accordance with the law of land.”

Apart from these, Part IXA of the Constitution which deals with the area of Municipalities has provisions for the environment. Article 243 ZD (3)(a) states that, “Every District Planning Committee shall, in preparing the draft development plan have regard to matters of common interest between the Panchayats and the Municipalities including spatial planning, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation.” Article 243W (a) (ii) of the Constitution provides provisions for the Municipalities “the performance of functions and the implementation of schemes as may be entrusted to them[by the legislature of a State] including those in relation to the matters listed in the Twelfth Schedule.” The matters relevant to protection of environment in the Twelfth Schedule are:

- Urban planning including town planning
- Regulation of land-use and construction of buildings
- Water supply for domestic, industrial and commercial purposes
Public health, sanitation conservancy and solid waste management

Urban forestry, protection of the environment and promotion of ecological aspects

Cattle pounds; prevention of cruelty to animals

Regulation of slaughter houses and tanneries

The Eleventh Schedule of the Constitution also provides provisions for the protection of the environment through Article 243G (b) which says “Subject to the provisions of this Constitution, the legislature of a State may, by law, endow Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule”. In context of environment, these may include:

- Agriculture, including agricultural extension.
- Land improvement, implementation of land reforms, land consolidation and soil conservation.
- Minor irrigation, water management and watershed development.
- Animal husbandry, dairying and poultry.
- Fisheries.
- Social forestry and farm forestry.
- Drinking water.
- Non-conventional energy sources.
- Health and sanitation, including hospitals, primary health centres and dispensaries.
- Maintenance of community assets.
Though India is one of the first countries in the world to make provisions for the protection of environment in the Constitution, it faces certain drawbacks. For instance, it has failed to recognise some other forms of pollution like vibrations, electromagnetic waves, radiation, light pollution, ozone layer depletion, rise in temperature and offensive odors. This negligence may affect the environment severely. Further, the indigenous people do not know of their rights so the possibility of their claiming for the rights is very limited.

5. PARLIAMENT AND THE ENVIRONMENT

The Parliament of India which is the supreme bicameral legislative body of the country consists of the office of President of India and two chambers, the House of People, known as the Lok Sabha and the Council of States, known as the Rajya Sabha. Part V of the Indian Constitution vests all legislative powers in the Parliament i.e. the President of the Republic of India and both the Chambers. The Members of Parliament belong to different political parties in addition to representing the rich geographical and cultural diversity of the country. The House and the Council are equal partners in the legislative process i.e. legislation cannot be enacted without the consent of both chambers, but in certain cases the Constitution grants the House of People some unique powers. Thus, the legislation of every sector in India including environment, is passed and enacted by the Parliament of India. The parliamentary system of India implement that the Executive not only emanates from Parliament but is also accountable to Parliament for all its acts of omission and commission. The role of Parliament has not been limited to only enacting legislations but has widened to ensure executive accountability, control over the budget, constituent functions, representational role, educational role, informational functions, training and recruitment of leadership, besides other miscellaneous functions.

In 1984, ENVIS Centre 07 of the Ministry of Environment and Forests, was established in WWF-India to handle environment-related information on the Parliament, besides NGOs and the media. This is now a regular programme of monitoring parliamentary proceedings to collect and disseminate information relevant to environment issues. A substantial amount of environment-related information is exchanged in both the Houses of Parliament in response to queries and call attention notices raised by the members. In 1980, there were 387
environment related questions raised in Parliament, the number skipped to 633 the following year and reached the peak in 1986 with 1552 environmental questions asked in Parliament.\textsuperscript{54}

Further, to be more comprehensible about environment related issues, the questions or statements are divided into 24 categories. The subjects are agriculture, alternative technologies, bio-safety, climate change and meteorology, disaster management, energy studies, environment and forest trade issues, environmental conservation, environmental education, NGOs and media, environment impact assessment, forest conservation, freshwater and marine conservation, health and sanitation, medicinal plants, water management, wildlife management etc. For instance, during 2004, in the \textit{Lok Sabha} eight questions were asked in the field of agriculture and all were unstarred. In climate change, eight question out of which one was starred, five questions in mining and all were unstarred, two questions of sustainable development and were unstarred, sixteen questions of waste management of which all were unstarred, four questions of water management and all were unstarred, ten questions of biosafety and two were starred.\textsuperscript{55}

Moreover, the response of Ministries varies in the matters of environment raised in the Parliament. For instance, in the \textit{Lok Sabha} in 2005, the maximum number of questions were addressed to the Ministry of Environment and Forests, followed by Ministry of Water Resources, Ministry of Agriculture and Ministry of Non-Conventional Energy Resources.\textsuperscript{56} Correspondingly, in the \textit{Rajya Sabha}, the maximum number of questions were addressed to Ministry of Environment and Forests, followed by Ministry of Water Resources, Ministry of Non-Conventional Energy Sources and Ministry if Home Affairs.\textsuperscript{57} These parliamentary questions have proved to be an effective tool for focusing attention of ministries, exposing lacunae and forcing action.\textsuperscript{58}

Apart from these questions, a flurry of activities, events and information are discussed in the Parliament. During the period from March to December 2009, the main environment issues discussed in the Parliament were forest conservation, climate change and fresh and marine water conservation. During this period, the Parliamentary Committee urged the government to grow crops other than growing methane emissions and avoid negative impacts of paddy cultivation on the environment and climate. Delhi Cabinet decided to make it obligatory for land
allotment agencies to seek its “No Objection Certificate” before putting to use the Delhi ridge, forest or deemed forest land for non-forestry purposes and allowing construction projects or activity in or around them. Chief Minister Sheila Dikshit vowed to make Delhi a “zero plastic zone” and announced penal action against the violators. She also announced to develop 10 more forest in various part of Delhi. Rajasthan signed tripartite pact on saving tigers and so on.59 In the winter Lok Sabha session of 2009, 177 questions were addressed to Ministry of Environment and Forests pertaining to different subjects of environment. In the winter session of Rajya Sabha in 2009, 229 questions were addressed pertaining to environment.60

During January to March 2010, the major environment issues highlighted include food security, introduction of GM crops, solar energy, water conservation techniques, climate change, tiger conservation etc. Plans of creating “Solar Valleys” across the country were considered to deal with increasing pollution and exhausting fossil fuels. Ministers of about 10 states had opposed the plans of introducing GM crops in India. One of the major controversies during this period was IPCC report on melting Himalayan glaciers, which was proved wrong by the report issued by Ministry of Environment and Forests on climate change. Issues relating environment clearance delay afforestation, river conservation, tiger conservation planning i.e. launching of tiger information website, various programmes, newsletter launching etc. were also discussed.61

Besides these activities carried out in the Parliament in matters of environment, the department related standing parliamentary committee also carries out the work in the Parliament to promote intelligent participation of the members of Parliament in the working of different departments of the government.62 Its functions are to consider the Demands for Grants of the Ministry and make reports to the Houses, to examine such Bills as are referred to the Committee by the Chairman, Rajya Sabha or the Speaker, Lok Sabha, as the case may be, and make reports thereon; to consider Annual Reports of Ministry and make reports thereon; and to consider policy documents presented to the Houses, if referred to the Committee by the Chairman, Rajya Sabha or the Speaker, Lok Sabha, as the case may be, and make reports thereon.63
The latest report of the Parliamentary Standing Committee on Environment & Forests was presented to Rajya Sabha on 17 February 2009. In this report, serious concern over the ineffective implementation of Ganga Action Plan and Yamuna Action Plan was expressed. This report of the Committee dealt with the action taken by the Ministry of Environment and Forests on the recommendations contained in the 188th Report of the Department-related Parliamentary Standing Committee on Science and Technology, Environment and Forests on the Demands for Grants (2008-2009) of the Ministry of Environment and Forests which was presented to the Rajya Sabha on 29th April, 2008. There were twenty-one recommendations in the Report of the Committee.

Furthermore, the President of India is also concerned about the issues of environment. The President time to time in his/her speech, has talked about environment protection and policies related to it. Recently, the President of India gave a speech at the inauguration of the Delhi International Renewable Energy Conference in October 2010. In that speech, she talked about the energy conservation, security and sustainable development. In fact, the official website of the President of India called upon suggestions and concerns for the environmental policy. The Vice-President of India also talked about environment issues in his speeches. In a speech he said, “Security today is viewed as human security. It goes beyond state security in the traditional sense and encompasses environmental protection, resource security, sustainable development, basic amenities, good governance, social justice, and human rights.”

Moreover, the President’s estate (Rashtrapati Bhawan) became the first urban habitat in the country to be ISO 14001:2004 Certified (standards set by the International Organisation for Standards (ISO) for Environmental Management Systems) under the Project ‘Roshini’, inaugurated by the President of India in 2008. A host of energy saving measures has been initiated in the estate under the project. This includes, ban on usage of Plastic bags and replacement by more eco-friendly products, plantation of 11000 trees, a nature trail spread over 75 acres has been developed, electronic synchronisation of street and security lights with sunrise and sunset, use of energy efficient pumps, lights and equipment besides use of renewable
energy sources like solar energy, bio-gas plant, and piped natural gas, among others. As per the statistics of the Rashtrapati Bhavan, during January-June 2009, 78.95 lakh units of electricity were consumed in the President’s estate. But, due to the energy efficient measures, the corresponding electricity consumption from Jan-June 2010 has come down to 64.03 lakh units, which is a reduction of 14.92 lakh units, saving more than Rs. 90 lakh. 69
REFERENCES


Ibid, pp. 582-583.

*The Constitution of India*, op.cit., p. 159.


Mohd. Yousuf Bhatt, op. cit., p. 28.


Maharashtra receives more RTI queries than Britain, Mexico: Study, 18 April 2010, available at:

http://timesofindia.indiatimes.com/city/mumbai/Maharashtra-receives-more-RTI-queries-than-Britain-Mexico-Study/articleshow/5827998.cms accessed on 6 November 2010 at 5:00 pm.


Sairam Bhat, op. cit.

M. K. Ramesh, op. cit.


Ibid, p. 331.


40 O.P. Dwivedi, op. cit.


43 Sailaja Gullapalli, op.cit.

44 L.K. Koolwal vs. State Of Rajasthan and others AIR 1988 Raj 2.

45 The Constitution of India, op.cit., p. 147.

46 Ibid, pp. 143-144.


49 http://www.indiaenvironmentportal.org.in/node/154703 accessed on 23 October 2010 at 1:21 pm.

50 http://www.wwfenvis.nic.in/parliament_environment.aspx accessed on 29 October 2010 at 3:21 pm.

51 Inaugural Address by Hon’ble Speaker of Lok Sabha at the Appreciation Course in Parliamentary Processes and Procedures for Probationers of the Indian Administrative Service, 2009 batch and the Royal Bhutan Civil


56 ENVIS Newsletter, WWF for Nature-India ENVIS Centre (NGOs, Parliament & Media), Volume 5, Number 17, 2006, p. 7.

57 Ibid, p. 6.

58 Ronald J. Herring and Erach Bharucha, op. cit.

59 ENVIS Newsletter, WWF- India ENVIS Centre (NGOs and Parliament) Volume 1, Number 4, 2009, p. 1.


61 ENVIS Newsletter, WWF- India ENVIS Centre (NGOs and Parliament), Volume 11, Number 1, January –March 2010, p. 8.


63 Ibid, p. 190.
Department-related Parliamentary Standing Committee on Science and Technology, Environment and Forests: 201st Report, Rajya Sabha Secretariat, New Delhi, February 2009, p. iii.

Speech by Her Excellency The President of India, Shrimati Pratibha Devi Singh Patil at the Inauguration of the Delhi International Renewable Energy Conference (DIREC), New Delhi, 26 October 2010, available at http://presidentofindia.nic.in/sp261010.html Accessed on 30 October 2010 at 5:54 pm.

http://presidentofindia.nic.in/env_policy.html accessed on 30 October 2010 at 5:44 pm.

Address of the Hon’ble Vice President of India, Shri M. Hamid Ansari at the Golden Jubilee Celebration of the National Defence College at 6, Tees January Marg, New Delhi, 27 April 2010, available at http://vicepresidentofindia.nic.in/printable.asp?id=279 accessed on 30 October 2010 at 8:43 pm.

http://presidentofindia.nic.in/pr250710.html accessed on 30 October 2010 at 8:15 pm.