CHAPTER-II
THE INDIAN CONSTITUTION AND
ENVIRONMENTAL PROTECTION

2.1. Introduction

In India, the concern for environmental protection has not only been raised to the status of fundamental law of the land, but it is also wedded with human rights approach and it is now well established that, it is the basic human right of every individual to live in pollution free environment with full human dignity. In view of the various constitutional provisions and other statutory provisions contained in various laws relating to environment protection, the Supreme Court has held that the essential feature of “sustainable development” such as the “precautionary principle” and the “polluter pays principle” are part of the environmental law of the country.

When our constitution was drafted it did not contain any specific provisions on environment and even the word “Environment” did not find a place in the constitution; there are certain provisions which to great extent had direct bearing on the environment such as improvement of public health, organization of agricultural and animal husbandry on modern and scientific lines and protection of natural monuments from spoliation, disfigurement etc.

Article 47 of the Constitution is considered to be more important, because it imposes the primary duty on the State to provide public with improved health, raised level of nutrition and ultimately improved standard of living. Public health can be assured

2 Article 47 “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”.
3 Article 48 “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”.
4 Article 49 “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”.
to the public only by offering the safe and protected environment to live in. This enabled the framers of our Constitution to be more conscious on the environmental concern.

The then Prime Minister Mrs. Indira Gandhi, in the first International Conference on Human Environment at Stockholm in 1972, voiced deep concern about the degradation of the environment and eco-imbalance. She also emphasized that pollution, population and poverty are inter-related problems and there must be an integrated approach to deal with them. India was also one of the signatories of the Stockholm Declaration which is known as Magna Carta on human environment. Based upon the Stockholm conference, the Indian parliament passed the forty second amendment to the constitution in the year 1976\(^5\) and incorporated specially two Articles relating to protection and improvement of environment where in the Constitution of India obligates the “State” as well as “Citizens” to “Protect and Improve” the environment\(^6\).

2.2. Environmental Protection and Preamble of the Constitution

The preamble\(^7\) of our Constitution provides that our country is based on “Socialistic” pattern of society, where the State pays more attention to the social problems than on any individual problems. Environmental pollution which has emerged as one of the biggest social problems is being regarded as a real problem affecting the society at large and thus state is under an obligation to fulfil the basic aim of socialism, that is, to provide decent standard of living to all which can be possible from a pollution free environment\(^8\).

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\(^5\) The Constitution (42\(^{nd}\) Amendment) Act, 1976 received the assent of President of India on December 16, 1976.

\(^6\) Article 48-A “Protection and improvement of environment and safeguarding of forests and wild life: The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country”. Article 51A(g) It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures;

\(^7\) The Constitution of India 1949 Preamble: “We, The People of India, Having Solemnly Resolved to Constitute India into a Sovereign, Socialist, Secular, Democratic, Republic and To Secure to all its Citizens: Justice, Social, Economic and Political; Liberty of Thought, Expression, Belief, Faith and Worship; Equality of Status and of Opportunity; and to Promote among them all Fraternity Assuring the Dignity of the Individual and the Unity and Integrity of the Nation; In Our Constituent Assembly this Twenty Sixth Day of November 1949, Do Hereby Adopt, Enact and Give to Ourselves this Constitution.

\(^8\) Dr. Sukanta K. Nanda, *Environmental Law*, 65 (Central Law Publication: Allahabad, 1\(^{st}\) Edn., 2007).
The preamble further declares that, the great rights and freedoms which the people of India intended to secure all citizens include justice, social, economic and political. Justice also includes environmental justice. Although the particular word ‘environment’ does not find a place here, we can very well interpret this to include environmental justice. Environment as a subject matter has entered in our day-to-day life in such a way that we cannot ignore deliberations on environmental matters when discussing about socio-economic or socio-political scene of the country.

Environmental justice is also supported by the words of K.S. Dakshinamurty that, “Environment as a subject, environment as a concern and environment as part of socio-economic-political structure in the country seems to have taken off. In fact it has entered the structure in such a way that no intellectual, political or academic discourse is complete without it”.

The Preamble also declares India to be a “Democratic Republic”. In a democratic set up, people have the right to participate in government decisions. They also have the right to know and access to information of government policies which is very important for the success of the environment policies.

2.3. Division of Legislative Powers in Environmental Matters

Under Indian federal system, governmental power is shared between the Union and the State governments. Part XI of the Constitution governs the legislative and administrative relations between the union and the states. Parliament has the power to legislate for the whole country, while the State Legislatures are empowered to make laws for their respective states. Article 246 of the Constitution divides the subject areas of legislation between the union and the states. The union list (List I) in the seventh schedule to the Constitution contains subjects over which parliament has exclusive power to legislate. This include defence, foreign affair, atomic energy, inter-state transportation,

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12 Article 246 (1) Notwithstanding anything in clauses (2) and (3), parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the union list).
shipping, major ports, regulation of air traffic, regulation and development of oil fields, mines and mineral development and inter-state rivers. The State Legislatures have exclusive powers to legislate with respect to subjects in the State List\(^\text{13}\) (List II), such as public health and sanitation, agriculture, water supplies, irrigation and drainage and fisheries. Under the Concurrent list\(^\text{14}\) (List III) both Parliament and State Legislatures have overlapping and shared jurisdiction over some subject areas including forest, the protection of wild life, mines and mineral developments not covered in the union list, population control and family planning, minor ports and factories.

Parliament has residual power to legislate on subjects not covered by the three lists\(^\text{15}\). When a Central Law conflicts with a State Law on a concurrent subject the former prevails. A State Law passed subsequent to the Central Law will prevail, however, if it has received Presidential assent under Article 254\(^\text{16}\).

\(^{13}\)Article 246 (4) parliament has power to make laws with respect to any matter for any part of the territory of India not included (in a State) notwithstanding that such matter is a matter enumerated in the State List.

\(^{14}\)Article 246 (2) Notwithstanding anything in clause (3), Parliament and, subject to clause (1), the legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the Concurrent List).

\(^{15}\)Article 248 (1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

\(^{16}\)Article 254 Inconsistency between laws made by parliament and laws made by the Legislatures of States (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void (2) Where a law made by the legislature of a State with respect to one of the matters enumerated in the concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State: Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.
The parliament is also empowered to legislate in the ‘national interest’ on matters enumerated in the State List\textsuperscript{17}. In addition Parliament may enact Laws on State subjects, for States whose legislatures have consented to central legislatures. Thus, the Water (Prevention and Control of Pollution) Act of 1974 was enacted by the Parliament pursuant to consent resolution passed by the State Legislatures\textsuperscript{18}.

The division of legislative powers shows that, there are ample provisions to make laws dealing with environmental problems at the local level as well as at the national level, but under the federal system, the Central Government controls the finances largely. It may happen that when an industrial project is allocated to a particular state, it may have some environmental impact in that state and thus it may be opposed by the environment and planning department of the state concerned. On the other hand the Central Government may threaten to withdraw the project from the State if its implementation is opposed and resulting into a conflict between development and environment. This conflict is being taken care of by the Environmental Impact Assessment (EIA) which is an effort to anticipate measure and weigh the socio-economic and eco system changes that may result from the proposed project.

In India, the need for EIA has been recognized even by the planning commission by the Seventh Five Year Plan. However, existing system of administrative framework

\textsuperscript{17} Article 249 Power of Parliament to legislate with respect to a matter in the State List in the national interest (1) Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two thirds of the members present and voting that it is necessary or expedient in national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force (2) A resolution passed under clause (1) shall remain in force for such period not exceeding one year as may be specified therein: Provided that, if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner provided in clause (1), such resolution shall continue in force for a further period of one year from the date on which under this clause it would otherwise have ceased to be in force (3) A law made by Parliament which Parliament would not but for the passing of a resolution under clause (1) have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period.

\textsuperscript{18} Shyam Divan and Armin Rosencranz, \textit{Environmental Law and Policy in India}, 43 (Oxford University Press: New Delhi, 2\textsuperscript{nd} Edn., 2003).
with its centralized environmental appraisal may lead to conflict between the project authorities and environmental authorities.\(^{19}\)

### 2.4. International Environmental Agreements and India’s Obligations

The objectives of international environmental agreements would be effectively achieved if all relevant states become parties to them and rigorous implementation including monitoring of compliance was ensured. India is a contracting party or signatory to various international treaties and agreements relating to regional or global environmental issues.\(^{20}\) India is under an obligation to translate the contents and decisions of International Conferences, treaties and agreements into the stream of national law. Article 51(c) provides that “the State shall endeavour to foster respect for international law and treaty obligations in the dealings of organized people with one another”.

Article 253 of the Constitution specifically empowers the Parliament “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”. The subject matters over which the parliament can make laws are “participation in the international conferences, associations and other bodies and implementing of decisions made there at”\(^ {21}\) and “entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries”\(^ {22}\). In view of the broad language used in Article 253 as also in entries 13 and 14 in Union List, the parliament has very wide power of legislation including the subjects mentioned in the State List provided those issues are

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\(^{20}\) India has also made accession to the international covenant on Economic Social and Cultural Rights on 10th April, 1979. Article 12(1) of the covenant recognises the right of every one to the enjoyment of the highest standard of physical and mental health. Article 12 (2)(b) of the covenant further states that the steps should be taken by the state parties this convention to achieve the full realization of this right which shall include those necessary for the improvement of all aspects of environmental and industrial hygiene. India also participated in Stockholm Conference of 1972, Earth Summit of 1992, Earth Summit plus Five of 1997 and Earth Summit at Johannesburg in 2002.

\(^{21}\) Entry No.13 of the Union List in the VII Schedule to the Constitution.

\(^{22}\) Entry No.14 of the Union List in the VII Schedule to the Constitution.
addressed at any international conferences, association or other body or it is the implementation of any international treaty, agreement or convention\textsuperscript{23}.

The first consequence of the broad provisions on the environment protection in view of Article 253 read with Entries no. 13 and 14 of the Union List is that, the Parliament can pass any law on environment protection and the same cannot be questioned before the courts on the ground that the Parliament lacked legislative competence\textsuperscript{24}.

Secondly, in India the Parliament has made use of this power to enact the Air (Prevention and Control of Pollution) Act of 1981 and the Environment (Protection) Act of 1986. The Preamble of these laws state that these Acts were enacted to implement the decisions reached at the United Nations Conference on Human Environment held at Stockholm in 1972.

In \textit{People’s Union for Civil Liberties v. Union of India}\textsuperscript{25} the Supreme Court held that the provisions of the International Covenant, which elucidates and go to effectuate the fundamental rights guaranteed by our constitution, can certainly be relied upon by courts as facets of those fundamental rights and hence, enforceable as such.

In \textit{Vellore Citizens Welfare Forum v. Union of India}\textsuperscript{26} the Supreme Court 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 be deemed to have been incorporated in the domestic law and shall be followed by the courts of law.

\textbf{2.5. Duties of the Citizen Towards Environmental Protection}

Prior to the Forty-Second Amendment, the Fundamental Law of the land attached more importance on rights. The makers of the Constitution were concerned about the


\textsuperscript{24} Let us remember in India, the higher Judiciary, that is Supreme Court and High Courts have the power of judicial review under Article 32 and 226 respectively and they can strike down any Parliamentary legislation if it is enacted without any legislative competence. The Supreme Court has nullified five constitutional amendments which sought to diminish judicial power either directly or indirectly, \textit{Kesavananda Bharati v. State of Kerala} AIR 1973 S.C 1461, \textit{Indira Gandhi v. Raj Narain} AIR 1973 S.C 2299, \textit{Minerva Mills Ltd., v. Union of India} AIR 1980 S.C 1789, \textit{Waman Rao v. Union of India} AIR 1981 S.C 271 and \textit{Sambamurthy v. State of AP} AIR 1987 S.C 663.

\textsuperscript{25} (1997) 3 SCC 433 at 422.

\textsuperscript{26} (1996) 5 SCC 647 at 660.
moral and natural rights. The intention behind it was that the citizens and the State would shoulder the responsibility to protect the Constitutional order as their moral duty. As the time passes the citizens became conscious about their rights and thereby neglected their duties. Rights and duties are very important elements of Law. They correlated to each other in such a way that one cannot be conceived without the other. A right is always against someone upon whom they correlative duty is imposed\textsuperscript{27}.

The Constitution (Forty-Second Amendment) Act, 1976 added a new part IV-A dealing with “Fundamental Duties” in the Constitution of India\textsuperscript{28} Article 51-A (g) specially deals with fundamental duty with respect to environment that: “It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures”.

Article 51-A (g) refers to the 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. 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 environment quality if it has been polluted. So it is the duty of every citizen to preserve the environment in the same way as nature has gifted it to all of us\textsuperscript{29}.

In \textit{Rural Litigation and Entitlement Kendra v. State of UP}\textsuperscript{30} Justice R.N. Mishra opined that “preservation of the environment and keeping the ecological balance unaffected is a task which not only the government but also every citizen must undertake. It is a social obligation and let us remind every Indian citizen that it is his fundamental duty as enshrined in Article 51-A(g) of the Constitution”.

In \textit{Kinkari Devi v. State}\textsuperscript{31} Justice P.D. Desai remarked: “There is both a constitutional pointer to the state and a constitutional duty of the citizens not only to

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\begin{enumerate}
\item Dr.Sukanta K.Nanda, \textit{Environmental Law}, 78 (Central Law Publication: Allahabad, 1\textsuperscript{st} Edn., 2007).
\item Sec 11 of the Constitution (Forty-Second Amendment) Act, 1976 w.e.f 3.1.1977.
\item AIR 1987 SC 359.
\item AIR 1988 HP 4.
\end{enumerate}
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protect but also to improve the environment and to preserve and safeguard the forest, the flora and fauna, the rivers and the 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 betrayal of the fundamental law which the state and indeed the every Indian is bound to uphold and maintain”.

In *L. K. Koolwal v. State of Rajasthan and Ors* Mr.L.K.Koolwal moved the High Court under Article 226 and highlighted that the Municipality has failed to discharge its “primary duty” resulting in the acute sanitation problem in Jaipur which is hazardous to the life of the citizens of Jaipur. The Court explained the true scope of Article 51-A in the following words: “We can call Article 51-A 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 citizens 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 the land. Omissions or commissions are brought to the notice of the court by the citizen and thus, Article 51-A gives a right to the citizens to move the court for the enforcement of the duty caste on the state, instrumentalities, agencies, departments, local bodies and statutory authorities created under the particular law of the state.

The court pointed out that “right and duty co-exists. There cannot be any right without any duty and there cannot be any duty without any right”. Insanitation leads to a slow poisoning and adversely affects the life of the citizens and hence it falls within the purview of Article 21 of the constitution. It is the duty of the every citizen to see that rights which he has acquired under the constitution are fulfilled.

The Court directed the Municipality to remove dirt, filth etc., from the city with in the period of six months. The Court made it clear that it is not the duty of the court to see whether the funds are available or not. It is the duty of the administration and municipal council to see that primary duties are fulfilled. The Court concluded the judgment by observing that, “If the Legislature or the State government feels that the law enacted by them cannot be implemented then the Legislature has the liberty to scrap it, but which

32 AIR 1988 Raj 2.

remains on the statutory books will have to be implemented, particularly when it relates to primary duty\textsuperscript{34}.

In \textit{Goa Foundation v. State of Goa}\textsuperscript{35} the Bombay High Court examined the question of \textit{locus standi} from the premises of the fundamental duties under the constitution of India. In this case the petitioner was a society registered under the law relating to registration of societies and their members were citizens of India having fundamental duty under Article 51-A to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. The question before the Court was whether such a society also has the same duty. The Court answered this question in affirmative and held that such a society also has the same duty. On the basis of this the petitioner society was held to have a \textit{locus standi} to move to the Court to prevent ecological degradation, to formulate and implement programme for rehabilitation of environment and to restore ecological balance.

In \textit{Sitaram Chhaparia v. State of Bihar}\textsuperscript{36} public interest litigation was filed by five persons, residents of a locality seeking directions from the court for closure of tyre retreading plant in the residential area as the said industry was emitting carbon-di-oxide gas and other obnoxious gases from its furnaces causing harm to the environment of the locality. The Patna High Court held that protecting the environment is now a fundamental duty under Article 51-A of the Constitution and accordingly the respondents were directed to wind up their industry and the State respondents were obliged to ensure that.

As regard the duty contained in Article 51-A(g) of the Constitution in \textit{Abhilash Textiles v. Rajkot Municipal Corporation}\textsuperscript{37} has held that notices asking the petitioner to stop discharging the effluents from the factory on public road or drainage having natural environment on the pain of closing the factory will be valid.

\textsuperscript{34} \textit{Ratlam Municipality v. Vardhichand}, AIR 1980 SC 1622.
\textsuperscript{35} AIR 2001 Bom 318 at 319.
\textsuperscript{36} AIR 2002 Pat 134.
\textsuperscript{37} AIR 1988 Guj 57.
2.6. Duties of the State Towards Environmental Protection

Article 47 of the Constitution which reads:

“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 medical purposes of intoxicating drinks and drugs which are injurious to health”.

The basic principle embodied in the Article very clearly denies the statement to some of the learned authors that initially our Constitution was environmentally blind and environment as a subject has been left out of the Constitution. Article 47 calls upon the State to perform the basic duty to look after the health of the citizen and also take necessary and effective steps to improve their standard of living and also raise the level of nutrition. Improvement of public health forms the core of environment because due to various environmental hazards it is the health of the general people which comes under severe threat. In order to protect the health the framers of the Constitution gave emphasis on the improvement of public health which is more vital for the existence of the mankind.

In the present times several factors account for the pollution hazards which is going beyond control. The pollution of water and air spoils the nature very well and affect our health. Therefore, taking into consideration, the Constitution very aptly recognized the right to health and casts a responsibility upon the State making it obligatory to work for improving the health of the citizens.

In *Talcher Swasthya Surakshya Parishad v. Chairman-Cum-MD Mohanadi Coal Fields Ltd., and Others*\(^39\) it was alleged that due to the operation of the collieries in the Talcher area, the people of Talcher town and nearby areas have been affected as there is no pure air to breathe and pure water to drink. They are forced to inhale such air being exposed to dust and effluent material and also are forced to take contaminated water which has become unsuitable for drinking purposes due to such dust and effluent articles.


\(^{39}\) AIR 1996 Ori 195.
It was also alleged that due to extraction done from underneath the ground surface, land is becoming loose and there have been several instances of seepage of water and subsidence of earth, thereby endangering human life and property. In this case the High Court observed that:

“It is needless to say that all concerned, i.e., the governments, the government agency like the Pollution Control Board, the coal-mines owners operating in the area have to ensure that at the altar of industrial development, environment and consequentially health of the people do not get sacrificed. It is the function of the Pollution Control Board to ensure that the rigid guidelines required to be followed in the matter of air and water pollution. Statistics may not always reflect the correct state of affairs. In the maze of figures, let welfare of people is not lost”.

The Pollution Control Board was directed to take strict steps after determining consequences of such pollution and see that there is no reoccurrence. It was further directed by the Court that, “for industrial development, the people should not become ill on account of collapse of buildings, surface erosion and water pollution\textsuperscript{40}.

In Hamid Khan v. State of Madhyapradesh\textsuperscript{41} it was held that there was a gross negligence on the part of the state government in not taking proper measure before supplying drinking water from hand-pumps which has resulted in colossal damage to the people, the Court held that the State was responsible and has failed to discharge its primary responsibility.

With the objective of affording better protection to the environment, the Constitution was amended in the year 1976 and a new Article 48-A was inserted into the Constitution which reads:

“The State shall endeavour to protect and improve the environment and safeguard the forests and wild life of the country”.

This Article used the word ‘Environment’ in a wider sense which affects all the living being and influences the conditions of their lives. Water and air are among such important factors which mould the life of the citizens. Billions of years have passed

\textsuperscript{40} Dr.Sukanta K.Nanda, \textit{Environmental Law}, 75 (Central Law Publication: Allahabad, 1\textsuperscript{st} Edn., 2007).

\textsuperscript{41} AIR 1997 MP 191.
and the society is still dependant on water and also will continue to do so, thus proving the necessity and vitality of water for the existence of the mankind. Hence, it becomes the pious duty and responsibility of the State to protect the water and water resources as well as whole environment from all activities. So if we construe the Article, this necessarily requires the State not only to adopt the protectionist policy but also to provide for the improvement of the environment.

Article 48-A further provides “to safeguard the forests and wild life”. This is an important provision as the environment is greatly influenced by forests and wild life. The forests in particular has a direct relation with water pollution as the forest is responsible for natural rain which protects against pollution to a great extent and again by maintaining a balance, it constitutes an important safeguard against atmosphere pollution. In this way the forests contribute a lot in protecting the pollution of water.42

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 to.

In Shri. Sachidanand Pandey v. State of West Bengal43 the Supreme Court pointed out that whenever a problem of ecology is brought before the court, the court is bound to bear in mind Articles 48-A and 51-A (g) of the Constitution, the Court further observed: “When the Court is called upon to give effect to the directive principles and the fundamental duty, the court is not to shrug its shoulders and say that priorities are a matter of policy. The least the Court may do is to examine whether appropriate consideration are borne in mind and irrelevancies excluded. In appropriate cases, the Court may go further, but how much further must depend on the circumstances of the case. The Court may always give necessary directions. However, the Court will not attempt to nicely balance relevant considerations. When the question involves nice balancing of relevant considerations, the court may feel justified in resigning itself to acceptance of the decision of the concerned authority”.

42 Dr. Sukanta K. Nanda, Environmental Law, 76 (Central Law Publication: Allahabad, 1st Edn., 2007).
43 AIR 1987 SC 1109.
In *T. Damodhar Rao. v. S. O Municipal Corporation, Hyderabad*\(^{44}\) the court pointed out that in view of Articles 48-A and 51-A(g), it is clear that protection of environment is not only the duty of every citizen but it is also the “obligation” of the State and all other State organs including courts. In *M.C. Mehta v. Union of India*\(^{45}\) the court observed that Articles-39(e), 47 and 48-A by themselves and collectively casts a duty on the State to secure the health of the people, improve public health and protect and improve environment.

The cumulative effect of Articles 48-A and 51-A(g) appears to be that the ‘State’ as much as the ‘Citizens’ both are now under a constitutional obligation to conserve, preserve, protect and improve the environment.

### 2.7. Environmental Protection and Right to Life

Article 21 of the Constitution which reads:

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

The right to life as guaranteed by Article 21 of the Constitution is basic human right and the concept of right to life and personal liberty have been transformed into positive rights by active judicial interpretation. A new era ushered in the post *Maneka* period\(^{46}\) the concept of right to life witnessed new developments and new dimensions were added to the interpretation of fundamental rights embodied in Article 21. Prior to this all the fundamental rights guaranteed in Part III of the Constitution were considered to negative in nature and imposing only negative obligation on the State\(^{47}\). For the first time, thus Supreme Court transformed these rights into positive rights and imposed an affirmative duty on the State to enforce it.

This view of the Supreme Court was also reflected in *Francis Carolie Mulhin v. Administrator Union Territory of Delhi*\(^{48}\) where Justice Bhagawati observed that “the

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\(^{44}\) AIR 1987 AP 171.

\(^{45}\) (2002) 4 SCC 356. (popularly known as *CNG case*).

\(^{46}\) *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.


\(^{48}\) AIR1981 SC 746.
right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something more than just physical survival”. Further he added:

“Right to life includes the right to life with human dignity and that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for writing and expressing oneself in diverse forms with fellow human beings. Of course, the magnitude and contents of the components of this right would depend upon the extent of the economic development of the country but it must, in any view of the matter include the right to basic necessities of life”.

Again the Apex Court in *Chameli Singh v. State of UP*\(^49\) held that the need for a decent and civilized life includes the right to food, water and a decent environment. In the same sentiment the Court was of the opinion that:

“In any organized society, the right to live as human being is not ensured by meeting only the animal need of men. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this subject. The right to live guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilized society. All civil, political, social and cultural rights enshrined in the Universal Declaration on Human Rights or Convention or under the Constitution of India cannot be exercised without these human rights”.

Observing the stand taken by the Apex Court and considering the relation between fundamental rights and environmental protection, it was pointed out by Shyam Divan and Armin Rosencranz as:

“Encouraged by an atmosphere of freedom and articulation in the after math of the emergency, Supreme Court entered one of its most creative periods. Specially, the court fortified and expanded the fundamental rights enshrined in Part III of the

\(^{49}\) AIR 1996 SC 1051.
Constitution. In the process, the boundaries of the Fundamental right to life and personal liberty guaranteed in Article 21 were expanded to include environmental protection”\(^{50}\).

2.7.1. Right to Live in a Healthy Environment

Article 21 guarantees the right to life, a life of dignity, to be lived in a proper environment, free of danger of disease and infection. It is an essential fact that there exists a close link between life and environment. Right to life would become meaningless if there is no healthy environment\(^{51}\).

The right to live in a healthy environment as a part of Article 21 was evident from the case of Rural Litigation and Entitlement Kendra, Dehradun v. State of U.P.\(^{52}\) that the Rural Litigation and Entitlement Kendra, Dehradun and a group of citizens wrote to the Supreme Court against the progressive mining which denuded the Mussoori Hills of trees and forests cover and accelerated soil erosion resulting in landslides and blockage of underground water channels which fed many rivers and springs in the valley. The Court ordered the registry to treat this letter as writ petition under Article 32 of the Constitution. Initially the Court appointed an expert committee to advise the bench on technical issues. On the basis of the report of the committee, the Court ordered the closure of the limestone 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 great moment and significance not only to the people residing in the Missouri Hill range but also in their implications to the welfare of the generality of people, living in the country”\(^{53}\).

It is also stated that, the disturbance of ecology and pollution of water, air and environment by reason of quarrying operation definitely affects the life of the person and thus involves the violation of right to life and personal liberty under Article-21 of the Constitution.

\(^{50}\) Shyam Divan and Armin Rosencranz, Environmental Law and Policy in India, 49 (Oxford University Press: New Delhi, 2\(^{nd}\) Edn., 2003).


\(^{52}\) AIR 1985 SC 652 (popularly known as Doon Valley Case).

\(^{53}\) AIR 1985 SC 653.
In *M.C. Mehta v. Union of India*\(^{54}\) 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 *M.C. Mehta v. Union of India*\(^{55}\) where a group of tanneries doing business on the banks of the river of Ganga were alleged to be polluting the river. Justice K.N. Singh remarked:

“We are conscious that closure of tanneries may bring unemployment, loss of revenue but life, health and ecology have greater importance to the people”.

In *T.Damodhar Rao v. S.O. Municipal Corporation, Hyderabad*\(^{56}\) the A.P. High Court observed that:

“It would be reasonable to hold that the enjoyment of life and its attainment and fulfilment guaranteed by Article 21 of the Constitution embraces the protection and preservation of nature’s gifts 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 spoliation should also be regarded as amounting to violation of article 21 of the Constitution”.

In *L.K. Koolwal v. State*\(^{57}\) Rajasthan High Court held that the 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.

In *Charanlal Sahu v. Union of India*\(^{58}\) the Supreme Court of India held 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 articles 21, 48–A and 51 – A (g). It is the duty of the State to take effective steps to protect the guaranteed Constitutional rights.

\(^{54}\) AIR 1987 SC 1086 (Popularly Known as Oleum Gas Leakage Case).

\(^{55}\) AIR 1988 SC 1037.

\(^{56}\) AIR 1987 AP 171.

\(^{57}\) AIR 1988 Raj 2.

\(^{58}\) (1990) 1 SCC 613.
In *F.K. Hussain v. Union of India*\(^{59}\) the Kerala High Court pointed out that the right to sweet water and the right to free air is attributes of right to life, those are the basic elements which sustain life itself.

In *Subash Kumar v. State of Bihar*\(^{60}\) the Supreme Court observed:

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 right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life.

In *Rajiv Ranjan Singh v. State of Bihar*\(^{61}\) the Patna High 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 Articles 14, 21 read with Articles 47 and 48-A of the Constitution of India.

In *M.C. Mehta v. Union of India*\(^{62}\) the Supreme Court took note of environmental pollution due to stone crushing activities in and around Delhi. The court was conscious that environmental changes are the inevitable consequences of industrial development in our country, but at the same time the quality of environment cannot be permitted to be damaged by polluting the air, water and land to such an extent that it becomes a health hazard for the residents of the area. Showing deep concern to the environment, the Court observed that ‘every citizen has a right to fresh air and to live in pollution-free environment’.

In *Obayya Pujari v. Member Secretary, KSPCB, Bangalore*\(^{63}\) the stone crushing business was carried out by the units holding proper licenses and necessary permissions. They were causing environmental pollution and affecting health of the human beings, animals and vegetation. The Court held that the right to life is most fundamental right as enshrined in Article 21 of the Constitution of India and such right includes all attributes

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\(^{59}\) AIR 1990 Ker 321 at 323.
\(^{60}\) (1991) 1 SCC 598.
\(^{61}\) AIR 1992 Pat 86.
\(^{62}\) (1992) 3 SCC 256.
\(^{63}\) AIR 1999 Kant 157.
of life. Accordingly the Court directed the State Government, to immediately formulate a policy regulating carrying on stone crushing business and directed the state to identify safer zones for stone crushing within one year.

In *P.A. Jacob v. Superintendent of Police, Kottayam* the Kerala High Court held that compulsory exposure of unwilling persons to dangerous and disastrous levels of noise, would amount to a clear infringement of their constitutional guarantee of right to life under Article 21. Right to life, comprehends right to a safe environment, including safe air quality, safe from noise.

In *K.C. Malhotra v. State* the Madhya Pradesh High Court held that 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. Accordingly, the Court directed that there must be separate sewage line from which the filthy water may 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 for the improvement of public health as its primary duties.

In *Law Society of India v. Fertilizers and Chemicals Travancore Ltd.*, the Kerala High Court held that deprivation of life under Article 21 of the Constitution of India comprehends certainly deprivations other than total deprivation. The guarantee to life is certainly more than immunity from annihilation of life. Right to healthy environment is part of the right to life.

In *Kholamuhana Primary Fishermen Co-op. Society v. State* the Orissa High Court held that the right to life conferred by Article 21 of the Constitution includes the right of enjoyment of pollution-free atmosphere.

In *Virender Gaur v. State of Haryana* the Supreme Court observed:

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64 AIR 1993 Ker 1.
66 AIR 1994 Ker 308.
67 AIR 1994 Ori 191 at 207.
“Enjoyment of life and its attainment including their 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 and 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”.

In *Indian Council for Enviro-Legal Action v. Union of India* 69 (popularly known as H-Acid Case) a public interest litigation was field by an environmentalist organization, against the Union of India, State Government and State Pollution Board concerned to compel them to perform their statutory duties on the ground that their failure to carry on such duties violated rights guaranteed under Article 21 of the residents of the affected area.

In *Dr.Ashok v. Union of India* 70 the Supreme Court held that by giving an extended meaning to the expression “life” in Article 21 of the Constitution, the Court had brought health hazard due to pollution within it and so also the health hazards from use of harmful drugs.

In *A.P. Pollution Control Board (II) v. Prof.M.V.Nayudu* 71 the Supreme Court stated that the rights to healthy environment and to sustainable development are fundamental human rights implicit in the right to life. Our Supreme Court was one of the first Courts to develop the concept of “healthy environment” as part of right to “life” under Article 21 of the Constitution.

Thus from the perusal of all above mentioned cases it is evident that there has been a new development in India and right to live in a healthy and pollution free environment is considered as the fundamental right under Article 21, without this, right to life and livelihood would become meaningless and it is evident that the judiciary has certainly prevented the flagrant violation of the right to safe environment.

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69 (1996) 3 SCC 212.
2.7.2. Right to Livelihood and Environment

The judiciary has further broadened the scope and ambit of Article 21 and now “right to life” includes the “right to livelihood”. The right to earn livelihood is also considered as a part of right to life under Article 21 of the Constitution. This broad interpretation of the right to life is very helpful in checking the governmental action which has an environmental impact that threatens the poor people of their livelihood by dislocating them from their place of living or otherwise depriving them of their livelihood.

The right to livelihood as a part of right to life under Article 21 was recognised by the Supreme Court in Sodan Singh v. N.D.M.C., Ahamadabad Municipal Corporation v. Nawab Khan Gulab Khan, Ramesh Chander v. Intia Khan, and Olga Tellis v. Bombay Municipal Corporation in this case the petitioners, a journalist and two pavement dwellers challenged the governmental scheme by which the pavement dwellers were being removed from the Bombay pavements. The main argument advanced on behalf of the petitioners were that evicting a pavement dweller or slum dweller from his habitat amounts to depriving him of his right to livelihood. It was further argued that no person can be deprived of his life except according to the procedure established by law which has to be “just, fair and reasonable”. The petitioners also contended that the State is under an obligation to provide citizens the necessities of life and in appropriate cases the Courts have the power to issue orders directing the State by affirmative action. The court observes:

“If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live”.

76 AIR 1986 SC 180.
77 Maneka Gandhi v. Union of India, AIR 1978 SC 597.
The court further directed the Municipal Corporation to provide alternate sites or accommodation to slum and pavement dwellers within reasonable distance of their original sites and to earnestly pursue housing scheme for the poor and to provide basic amenities to slum dwellers.

In *K.Chandru v. State of T.N*\(^78\) the Supreme Court held that if the government plans the construction of a large dam or any other project without making proper environmental impact assessment and resulting in the displacement of persons from their habitat, thereby depriving them of their livelihood, then that action can be declared as unconstitutional being violative of Article 21 of the Constitution. The procedure of displacing the people from their habitat can be called “just, fair and reasonable” only when they are provided with suitable alternative sites with all basic amenities of life.

When there is any conflict between environment and development, the question to be considered in the larger dimensions of national complexities is that, on the one hand for the national progress and growth, the construction of dams, thermal power plants and exploitation of natural resources are a must. On the other hand, these actions may infringe the fundamental rights of the people in the area where that project is undertaken.

Judiciary in India has been very cautious in reconciling the environmental interests with the developmental process and avoiding any kind of conflict between the two. In *Banwasi Seva Ashram v. State of U.P.*\(^79\) the main grievance of the petitioner was that Adivasis and other backward people (tribal forest dweller) were using forest as their habitat and means of livelihood. Part of the land was declared reserved forest and in respect of other part acquisition proceedings were initiated as the government had decided that a Super Thermal Plant of the National Thermal Power Corporation Ltd., (NTPC) was to be located there. The Supreme Court gave directions safeguarding and protecting the interests of the Adivasis and backward people who were being ousted from their forest land by NTPC. The Court permitted the acquisition of land only after NTPC agreed to provide certain facilities to the ousted forest dwellers.

\(^{78}\) AIR 1986 SC 204.

\(^{79}\) AIR 1987 SC 374.
In this case the court impliedly treating the right of the Adivasis under Article 21 and observed that “it is common knowledge that Adivasis and other backward people living within the jungle used the forest area as their habitat and for generations. They had been using jungles around for collecting the requirements for their livelihood, fruits, vegetables, fodder, flowers, timber, animals by way of sport and fuel wood. At the same time the Court highlighted that for industrial growth as also for provisions of improved living facilities there is a great demand in this country for energy such as electricity”.

In *Karjan Jalasay Y.A.S.A.S. Samiti v. State of Gujarat* the Supreme Court also passed the interim orders under Article 32 requiring the state agencies to resettle and rehabilitate the tribal people who were being displaced by dams.

In *Pradeep Krishen v. Union of India* the Madyapradesh Government issued an order permitting collection of tendu leaves from sanctuaries and national parks by villagers/tribal living around the boundaries thereof with the object of maintenance of their traditional rights including the right to livelihood. This order was challenged by public interest litigation for the protection of ecology, environment and wild life in sanctuaries and national parks. The Supreme Court in the circumstances of this case refused to squash the order and held that if one of the reasons for shrinkage of the forest cover is entry of these villagers/tribal urgent steps must be taken to prevent any destruction or damage to the environment, wild life, *flora* and *fauna*. The Supreme Court in the above case protected the right to livelihood of the tribal on the one hand and showed its concern for the protection of the ecology on the other hand.

In *Animal and Environmental Legal Defence Fund v. Union of India* the petitioner, an association of lawyers and other persons who were concerned with the protection of environment, filed a public interest litigation challenging the order of the chief Wildlife Warden, Forest Department, granting 305 fishing permits to tribal villagers formerly residing within the National Park area for fishing in the reservoir situated in the heart of the National Park.

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80 AIR 1987 SC 532.
81 (1996) 8 SCC 599.
82 (1997) 3 SCC 549.
The Supreme Court once again showed its concern for the right to livelihood of the tribal villagers and observed that it could have been more desirable, had the tribal’s been provided with suitable fishing areas outside the National Park or if land had been given to them for cultivation.

In *M.C. Mehta v. Union of India* 83 public interest litigation was filed to protect Delhi from the environmental pollution caused by hazardous/noxious/heavy/ large industries operating in Delhi. The Court held that such industries are liable to be shifted /relocated to other towns of National Capital Region (NCR) as provided under the Master plan for Delhi Perspective 2001. The Court directed 168 industries, which were identified as such to stop functioning/operating in the city of Delhi and they could shift or relocate themselves to any other industrial estate in NCR.

The Supreme Court in order to mitigate the hardship to the employees of such industries due to their closure/shifting/ relocation specified the rights and benefits to which workmen employed in these 168 industries were entitled on relocation/shifting of these industries. Subsequently, the Supreme Court has also issued the package of compensation for workmen employed in industries which are not relocating/ shifting or closing down as per earlier directions of the Supreme Court 84. Thus, the Supreme Court protected the right to livelihood of the workmen and tried to balance the industrial development and environment protection.

In *M.C. Mehta v. Union of India* 85 (popularly known as *Tajmahal case*) the Supreme Court once again followed the path of sustainable development and directed that the industries operating in *Taj Trapezium Zone* (TTZ) using coke/coal as industrial fuel must stop functioning and they could relocate to the alternate site provided under the Agra Master Plan. In this case also the Supreme Court specified the rights and benefits to which the workmen of such industries were entitled and thus, protected their right to livelihood 86 and followed the guiding principle of sustainable development.

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83 (1996) 4 SCC 750.
From the various decisions of the Supreme Court it is evident that development is not antithetical to environment. However, thoughtless development can cause avoidable harm to the environment as well as it deprives the people of their right to livelihood.

2.7.3. Right to Know and Environment

The right to know is also implicit in Article 19(1) (a) and it has a close link with Article 21 of the Constitution particularly in environmental matters where the secret government decision may affect health, life and livelihood of the people. The right to know or access to information is the basic right for which the people of democratic country like India aspire for. Secrecy erodes the legitimacy of elected governments. On the other hand, the right to know strengthens the participatory democracy.

The right to know plays a very important role in environmental matters. Any governmental plan of construction of dam or information of the proposed location of nuclear power stations or thermal power plants and hazardous industries, which directly affect the lives and health of the people of that area, must be widely published.

The Judiciary has broadened the scope of the right to know in *S. P. Gupta v. Union of India*87 the Supreme Court recognized the right to know to be implicit in the right to free speech and expression. The Supreme Court observed:

“This is the new democratic culture of an open society towards which every liberal democracy is moving and our country should be no exception. The concept of open government is the direct emanation from the right to know which seems to be implicit in Article-19(1) (a). Therefore, disclosures of information in regard to the functioning of the government must be the rule and secrecy exception justified only where the strictest requirements of public interest so demands”.

In *L.K. Koolwal v. State*88 the Rajasthan High Court held that a citizen has a right to know about the activities of the State, the instrumentalities, the departments and agencies of the State. The Court further held that, “the State can impose and should impose reasonable restrictions in the matter like other fundamental rights where it affects

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87 AIR 1982 SC 149 at 234.
88 AIR 1988 Raj 2.
the national security and other matter affecting the nation’s integrity. But this right is limited and particularly in the matter of sanitation and other allied matter every citizen has a right to know how the state is functioning and why the state is withholding such information in such matters”.

In *R.P. Ltd., v. Proprietors, Indian Express Newspapers, Bombay Pvt. Ltd.*, the Supreme Court held that “we must 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 know is a basic right to which citizen of a free country aspires in the broadening horizon on the right to life in this age on our land under Article 21 of the Constitution”.

In *F.B. Taraporawala v. Bayer India Ltd.*, where the question before the court was regarding the relocation/shifting of chemical industries from the populated area of Thane in Mumbai, the Court felt that it has neither the expertise nor in possession of various information which was required to decide one way or the other so far as the question of relocation is concerned. The Court also directed the Constitution of an “authority” under section 3(3) of the Environment (Protection) Act, 1986, which was required to examine the entire matter. Such an authority would have power to examine and know various aspects of development and environment protection and take action accordingly.

In *Research Foundation for Science Technology and Natural Resource Policy v. Union of India* the Supreme Court has stated that the right to information and community participation necessary for protection of environment and human health is an inalienable part of Article 21 and is governed by the accepted environment principles. Accordingly, the government and the authorities have to motivate the public participation by formulating necessary programmes.

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89 AIR 1989 SC 190.
90 (1996) 6 SCC 58.
2.8. Right to Equality and Environment

The Indian Constitution guarantees ‘right to equality’\textsuperscript{92} to all persons without any discrimination. This indicates that any action of the ‘State’ relating to environment must not infringe upon the right to equality as mentioned in the Article 14 of the Constitution. The Stockholm Declaration, 1972, also recognized this principle of equality in environmental management\textsuperscript{93} and it called up all the worlds’ nations to abide by this principle.

The judiciary, on various occasions, have struck down the arbitrary official sanction in environmental matters on the basis that it was violative of Article-14\textsuperscript{94}. The right to equality is generally resorted to in urban development where permission for construction is granted by the authorities arbitrarily under its discretionary powers without evaluating the public interest and without application of mind and considering the environmental impacts.

In \textit{Bangalore Medical Trust v. B.S Muddappa}\textsuperscript{95} the Supreme Court prevented an attempt to convert a public park site into nursing home. The City Improvement Board of Bangalore had prepared the Development scheme for the extension of the City of Bangalore. Under the scheme an area was kept for being developed as low Level Park. Subsequently, under the direction of the Chief Minister of the State the area kept for laying a park was converted to a civic amenity site where hospital was to be constructed by the appellant. When the construction activity was noticed, the resident of the area approached the High Court which allowed the petition. The Appellant came in appeal before the Supreme Court contenting that the decision to allot a site for a hospital rather than a park is matter within the discretion of the development authority and thus, the diversion of the user of the land for that purpose is justified under the Act. The Supreme Court dismissed the appeal and highlighted the importance of public parks and open space in Urban Development as follows:

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{92} Article 14: The State shall not deny to any person equality before law and equal protection of laws within the territory of India.
\item \textsuperscript{93} The Stockholm Declaration, 1972, Principle I, ‘Man has the fundamental Right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well being’.
\item \textsuperscript{94} \textit{Ajay Hasia v. Khalid Mujib} AIR 1981 SC 487 at 499.
\item \textsuperscript{95} (1991) 4 SCC 54.
\end{itemize}
\end{footnotesize}
“Protection of the environment, open spaces for recreation and fresh air, playgrounds for children and other conveniences are matters of great public concern and are 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 or selling such sites to private persons for conversion to some other user; it would be in direct conflict with the Constitutional mandate”.

Judge R. M. Sahia in his judgment observed that public park as a place reserved for beauty and recreation is associated with growth of the concept of equality and recognition of importance of common man it is a, ‘gift from people to themselves’. Its importance has multiplied with emphasis on environment and pollution. He further pointed that the “discretion is an effective tool of administration”. When affecting public interest, it should be exercised objectively, rationally, intelligibly, fairly and authority cannot act whimsically or arbitrarily.

It was held that the decision taken at the instance of the Chief Minister of the State to convert an open space reserved for public park into a site for constructing hospital and to allot the site to a private person was vitiated by non application of mind and was arbitrary, hence ultra vires and violation of Article 14 of the Constitution.

In D.D. Vyas v. Ghaziabad Development Authority96 the grievance of the petitioner is that the respondents had not taken any steps to develop the area reserved for park. On the other hand, respondents were marking time to carve out plots on such open space dedicated for Public Park in the plan and alienate the same with a view to earning huge profits. The Allahabad High Court followed the dictum of the Supreme Court in Bangalore Medical Trust case and held that the authority or the State cannot amend the plan in such a way so as to destroy its basic feature allowing the conversion of open spaces meant for Public Park. The Court was of the view that the respondents having failed to develop the park, have reminded grossly negligent in discharging their fundamental duty under Article 51-A (g) of the Constitution.

96 AIR 1993 All 57.
In *State of Himachal Pradesh v. Ganseh Wood Products*\(^{97}\) the Supreme Court held that a decision making authority must give due weight and regard to ecological factors such as the environmental policy of the government and the sustainable use of natural resources. A government decision that fails to take into account relevant consideration affecting the environment is invalid.

The Court also used Article 14 to justify the Government policy in certain cases. In *Kholamuhana Primary Fisherman Cooperative Society v. State*\(^{98}\) the government had framed a policy regarding fishing in Chilka Lake so as to protect the traditional rights of fisherman. The Court held that the said policy was neither arbitrary nor ambiguous and hence not violative of Article 14 of the Constitution. Further the Court pointed out that adoption of extensive and intensive prawn culture to earn “prawn dollars” in disregard to ecology was not proper.

The Court has also struck down the action of the authorities if it was taken arbitrarily. In *Mandu Distilleries Pvt. Ltd., v. M.P. Pradushan Niwaran Mandal*\(^{99}\) the Pollution Control Board issued direction for stoppage of production by the industry on the ground that it was causing water pollution. However, the Court found that there was serious flaw in “decision making process”. The decision was taken arbitrarily. The Court quashed the order passed by the board as violative Article 14 of the Constitution.

In *Ivory Traders and Manufacturers Association v. Union of India*\(^{100}\) the Delhi High Court justified the ban on the business in animal species on verge of extinction. The Court held that the ban on trade in imported ivory and articles made there from is not violative of Article 14 of the Constitution.

Article 14 can also be invoked to challenge the government action where permission for mining and other activities with high environmental impact is granted arbitrarily\(^{101}\).

\(^{97}\) AIR 1996 SC 149.

\(^{98}\) AIR 1994 Ori 191.

\(^{99}\) AIR 1995 MP 57.

\(^{100}\) AIR 1997 Del 267.

2.9. Freedom of Speech and Expression and Environment

Article 19(1) (a) guarantees every citizen a fundamental freedom of speech and expression. In India most of the environmental jurisprudence has developed by judicial activism. Most of the cases came before the Court as a result of public interest litigations (PILs) in which the people exercised their freedom of speech and expression sometimes by writing letters to the court or otherwise by filing petitions before it, highlighting the violation of the rights of the people to live in healthy environment in one way or the other. Freedom of speech and expression under Article 19(1) (a) also includes freedom of press. In India the public opinion and media have played an important role in moulding the public perception of environmental issues.

In Kerala Sastra Sahitya Parishad (KSSP) non governmetal organizations and influential environmentalists within and outside the government and the role of the media compelled the government to abandon “the Silent Valley Project”. In this case legal battle played only a peripheral role. Again in the Tehri Dam project, the public opinion and media compelled the government to make proper Environment Impact Assessment (EIA) of the proposed dam and consider all the aspects of safety of the project. The decision of the government to construct Tehri Dam was scrutinized by the Supreme Court in Tehri Virodhi Sangarsh Samiti v. State of Uttar Pradesh in this case the main grievance of the petitioners was that safety aspect have not been taken into consideration by the government in the Tehri Dam Project. The Court on the perusal of the various recommendations of the committees and factual matrix came to the conclusion that the government has applied its mind and considered the relevant aspects of safety and finally dismissed the petition.

In P.A.Jacob v. The Superintendent of Police, Kottayam the Kerala High Court held that freedom of speech under Article 19 (1) (a) does not include freedom to use loud speakers or sound amplifiers. Thus noise pollution caused by the loudspeakers can be controlled under Article 19(1) (a) of the Constitution.

102 Indian Express Newspapers (Bombay) Pvt ltd. v. Union of India AIR 1986 SC 515.
103 (1990) SCR Supl. (2) 606.
104 AIR 1993 Ker 1.
In Moulana Syed Md. Noorur Rehman Barkati v. State of West Bengal\textsuperscript{105} the Calcutta High Court observed that excessive noise is certainly pollution in the society. Under Article 19(1) (a) read with Article 21 of the Constitution of India, the citizens have a right of decent environment and they have a right to live peacefully, right to sleep at night and to have right to leisure which all are necessary ingredients of the right to life guaranteed under Article 21 of the Constitution. There are various other sources where the noise is created or generated but which offends citizen’s right guaranteed under Articles 19(1) (a) and 21 of the Constitution.

2.10. Freedom of Trade and Commerce and Environment

Article 19(1) (g) guarantees all citizens the right “to practice any profession or to carry on any occupation, trade or business”. This right of the citizens is not absolute. It is subject to Article 19(6) under which “reasonable restrictions”\textsuperscript{106} in the “interest of the general public” can be imposed. Thus, environmental interest from the hazards of any trade or business can be protected.

The Gujarat High Court in Abhilash Textiles v. Rajkot Municipal Corporation\textsuperscript{107} made clear that, ‘the petitioners cannot be allowed to reap profit at the cost of public health’. In this case petitioners conducting the business of dyeing and printing works in Rajkot area were discharging dirty water from the factory on the public road and in public drains without purifying the same, thereby causing damage to the public health. The petitioners claimed that they were carrying on the business for the last 20 to 25 years and the industry was providing employment to twenty to thirty thousand families. Notice


\textsuperscript{106} Article 19 (6) Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, (i) the professional or technical qualifications necessary for practicing any profession or carrying on any occupation, trade or business, or (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

\textsuperscript{107} AIR 1988 Guj 57.
to close would be very harsh as they would be compelled to close down the factory and would also be violative of Article 19(1) (g).

The Court held that one cannot carry on the business in the manner by which the business activity becomes a health hazard to the entire society. By discharge of effluent water on public road or in public drainage system the entire environment of the locality gets polluted. No citizen can assert his right to carry on business without any regard to the fundamental duty under Article 51-A (g) to protect and improve the natural environment. The Court further directed that if the petitioners wish to carry on the business then they must provide for purification plant before discharging the effluents on public roads or in public drainage system. The petitioner had no right under Article 19(1) (g) to carry on business without complying with the Municipal Law and other environmental statutes.

In *M.C. Mehta v. Union of India*\textsuperscript{108} where tanneries were discharging effluents from their factories in the holy river Ganga resulting in water pollution and not setting up a primary treatment plant in spite of being asked to do for several years. It was held that, an order directing them to stop working their tanneries should be passed as effluent discharge from tanneries is ten times noxious when compared with the domestic sewage water which flow in to the river and the court passed the following order:

“We are, therefore, issuing the directions for the closure of those tanneries which have failed to take minimum steps required for the primary treatment of industrial effluent. We are conscious that closure of tanneries may bring unemployment, loss of revenue, but life, health and ecology have greater importance to the people”.

In *M.C. Mehta v. Union of India*\textsuperscript{109} the Supreme Court directed that certain industries which were not showing any progress regarding the installation of the air pollution controlling system in compliance with the Supreme Courts earlier order, should be closed. In this case the Supreme Court did not refer Article 19 (1) (g) however it is implied that while passing the order it had in its mind Article 19 (1) (g) read with Article 19 (6) and 21 of the Constitution.

\textsuperscript{108} AIR 1988 SC 1037.
\textsuperscript{109} (1994) SCC Suppl. (3) 717.
In *S. Jagannath v. Union of India*\(^{110}\) the Supreme Court held that, the 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 area was causing degradation of mangrove eco system, depletion of plantation, discharge of highly polluting effluents and pollution of portable as well as ground water. Therefore it was held that the said activities of the industries are violative of Constitutional provisions and various other environmental legislations. While delivering the Judgment, Court had in mind that, before any shrimp industry is permitted to be installed in the ecologically fragile coastal area it must pass through a strict environmental test in other words “reasonable restriction” can be put to regulate the right under Article 19(1) (g) of the Constitution. Accordingly, the Supreme Court suggested that there must be an Environmental Impact Assessment (EIA) before permission is granted to install commercial shrimp farms. It must take into consideration the inter-governmental equity and compensation for those who are affected and prejudiced\(^ {111}\).

In *Burrabazar Fire Works Dealers’ Association v. Commissioner of Police, Calcutta*\(^ {112}\) the Court held that Article 19(1) (g) of the Constitution of India does not guarantee the fundamental right to carry on trade or business which creates pollution or which takes away that community’s safety, health and peace. The Court of the view that there is no inherent or fundamental right in a citizen to manufacture, sell and deal with fireworks which will create sound beyond permissible limits and which will generate pollution which would endanger health and public order. A citizen or people cannot be made a captive listener to hear the tremendous sound caused by bursting out from noisy fireworks.

In *Ashwin Jajal v. Municipal Corporation of Greater Mumbai*\(^ {113}\) public interest litigation was filed by a resident against the municipal corporation seeking direction to prohibit the display of illuminated advertisements by use of neon lights in residential

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\(^{110}\) (1997) 2 SCC 87.


\(^{112}\) AIR 1998 Cal 121 at 134.

\(^{113}\) AIR 1999 Bom 35.
areas and also to revoke the permission granted to the respondents for display of advertisements on the buildings. It was argued that the neon light sign boards created environmental and health hazards and were of nuisance value as the bright light is deterrent to peaceful sleep. On the other hand, the respondents said that they have fundamental right under Article 19 (1) (g) to have free trade. The court held that keeping in view the environmental and health hazard and nuisance value it is always open to the authorities to regulate the advertisement in a reasonable manner to the extent permissible and this does not result in the violation of fundamental right of free trade.

In *Baleshwar Singh v. State of U.P.*\textsuperscript{114} the U.P. State rule prohibited the operation of a saw mill within 80 kilometres of any reserved or protected forests. This was challenged by the owners of the saw mill on the ground that it violates the fundamental freedom under Article 19 (1) (g) of the Constitution. The Allahabad High Court dismissed the petition and held that this is a reasonable restriction imposed to stop uncontrolled cutting of green trees resulting in disturbing ecological balance. The existence of saw mill in, near or around any forest is prohibited for the maintenance of the forest wealth and ecological balance and for the social and national interest.

In *Obayya Pujari v. Member Secretray, K S P C B, Bangalore*\textsuperscript{115} the Court held that a licence in favour of stone crushing units does not confer on them absolute rights to carry on commercial activities of trade or occupation without limitation. The rights are subject to reasonable restrictions and can be regulated by Court direction as are necessary for controlling pollution from such units.

In *A.P. Gunnies Merchants Association, Hyderabad v. Government of A.P.*\textsuperscript{116} the High Court held that, the right to carry on business in old and used gunny bags is not absolute. The trade carried on involving activity of dusting and cleaning of gunny bags creates air and environmental pollution. Hence, the direction given by the State Government to shift the business from the thickly populated area to environmental safer place is valid and not violative of Article 19(1) (g) of the Constitution.

\textsuperscript{114} AIR 1999 All 84.

\textsuperscript{115} AIR 1999 Kar157 at 164.

\textsuperscript{116} AIR 2001 AP 453.
2.11 Conclusion

In this chapter the constitutional provisions and the related cases have been presented. It demonstrates the active role of the Supreme Court and the High Courts. In fact, during the last decade, the court has exhibited its legal scholarship in the development of environmental jurisprudence. *The Ratlam Municipality Case*\(^\text{117}\), *Delhi Gas Leakage Case*\(^\text{118}\), *the Ganga Pollution Cases*\(^\text{119}\), *Dehradun Quarrying Case*\(^\text{120}\), *Calcutta Taj Hotel Case*\(^\text{121}\) are some of the examples where the Court, not only by liberalizing the traditional rule of *locus-standi* but has evolved the concept of public interest litigation.

The role of higher judiciary as is witnessed from majority of the cases decided by it has been worth appreciating. The Court has successfully done its job, fulfilled its obligation and performed its duty. It is our submission, that judiciary is not the only effective form to resolve environmental problem which can be effectively solved only through public awareness and political will rather than judicial will. Thus, judiciary can and does play a role of catalyst and thereby speed up and gear up the process, but it has to be initiated by and from the public.

Further, the environmental issues are complex and need to dwell on points of scientific and technical relevance. The Courts in such situations find it difficult to form its own independent opinion and take recourse to the help of expert committees which is a long and time consuming exercise. In order to overcome such difficulties it is submitted that the suggestion made by the Supreme Court in the *Delhi Gas Leakage Case* for the setting up of environmental courts for speedy disposal of environmental cases, if implemented will a right step in the right direction.

Accordingly, there is an urgent need that citizens as well as the State must sit up and take notice of environmental degradation and take appropriate steps to improve it.

\(^{118}\) *M.C. Mehta v. Union of India*, AIR 1987 SC 965.
\(^{119}\) *M.C. Mehta v. Union of India*, AIR 1988 SC 1037.
\(^{121}\) *Sachidanand Pandey v. State of West Bengal*, AIR 1987 SC 1109.