

CONSTITUTIONAL DIMENSIONS WITH REFERENCE TO ENVIRONMENTAL PROTECTION IN INDIA

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1. Introduction

The main cause of environmental degradation is the human activity one way or the other. Humans have ruthlessly driven themselves to achieve unrealistically high standards of living that they cannot see the environment amidst the danger. They are totally engrained in their self motives and desires that they are blind folded towards the dilapidated condition of the environment. Such is the hypocrisy of the humans that though they work towards achieving so called development but still find peace in the mountains and in the ecstatic arms of the nature, i.e. they go for vacations to places who still have the environmental cover left. They want to live in skyscrapers but at the same time want to go to holidays at places either mountain covers or the beaches. They keep on working hard for development that does not provide them the peace that nature does. The activities of human beings have become ruthless to the extent that they do not even give time to the forest trees to regenerate themselves and themselves do not plant saplings so that new plants could grow. They are so much trapped in the vicious circle of self interest and desires, that they cannot see what harm they cause too the living beings outside that circle. They just keep on dilapidating the condition of the environment without realising its aftermaths. Since, law is the regulator of the human conduct, it plays an important role in protection of environment from pollution by regulating the human activities. Keeping in mind, that if human beings continuously go onto do the same, the environment will be no more and hence it will be a survival question for the human race itself. So, law has some provisions and guidelines according to which human beings have to work. In any environment conscious State, environmental problems are generally handled at legislature level. In India, from time to time various laws for the protection of environment , flora and fauna have been enacted.¹ Indian Constitution is the first constitution that provides provisions for the protection and conservation of environment. It relates human rights with the environment and also gives various constitutional mandates relating human rights to environment conservation and towards the Environment as a whole. In India, the

¹ For Example, the Wildlife Protection Act,1972 , The Water (Prevention and control of pollution) Act,1974 etc.

concern for environment has not only been raised to the fundamental law of land, but it is often related to the human rights and hence it is also said that every human being has the right to live in the environment friendly area and they have a duty to maintain the environment in which they live in. 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 provision contained in various laws relating to environmental 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.² The Constitution of India obligates the "State" as well as the "Citizens" to "protect and improve" the environment.³ The provisions of the Environmental Law in the Constitution are of such a strong nature that worldwide constitutions are influenced by them and admire them as a provision. The example of the Indian Constitutional provisions regarding the environmental protection has been followed by other nations in the world. For example, the framers of the Constitution of South Africa were greatly influenced by the provisions relating to environment protection under the Indian Constitution and they have also incorporated the similar provisions in their constitution.

2. History

The environment conservation is not a new concept as far as India is concerned. History has served as enough evidence for the Environmental reverence and conservation. Historically, the conservation of wildlife and environment as a whole was something that was considered to be very sacred and something which presented the folklore, tradition and culture of the country. It was something embedded deep into the roots of the people, that no matter what they have to protect the nature, no matter what. It was a belief which was engraved in the innate psyche and faith of the people. There was immense love enshrined in their hearts, for the conservation, love and protection of the environment. There have been various instances where this is very evident. Reverence for nature in India, has been clearly depicted in the

² See Vellore Citizens Welfare Forum v. Union of India, (1996) 5 SCC 647

³ See Articles 48A and 51A(g) of the Constitution of India

cave paintings which are nearly about thousand years ago i.e. the Bhimekta Caves, depicting birds, bear, rhinos, elephants, tigers, snakes etc. Every religious practice of the ancient Indian people, reflected the intensity of the love and belongingness to the animals such as the rhino, bull, horse, and elephants⁴. Be it any religion, Hinduism, Buddhism, Jainism, Sikhism, Christianity or Islam, every religion preaches love and affection towards the Environment. It reflects the faith and respect for the interdependence on the animals and it again focuses on the two way relationship of the man and the environment, that it is the universal rule that if we respect nature, it will respect us back.

Many animals are considered sacred and worshipped by several Hindu and other communities, and have thus received protection for centuries. The peafowl, sacred to lord Karttikeya is never hunted, the blue rock pigeon is considered sacred to Saint Hazrat Shah Lalal and is protected in the Bengal region. Even Rodents are considered sacred and are allowed to breed in the famous temple of Goddess Karnimata in Rajasthan⁵. The Tiger which is considered to be sacred to Goddess Vaishnomata and the Cobra which is considered to be sacred to Lord Shiva, though greatly feared, are afforded protection on religious grounds. Other animals and birds such as the Owl which is considered dear to Goddess Saraswati, is also revered in India and is attached with a great significance. This is how, many animals, trees, plants and other elements of nature, were usually given resemblance of the deities one used to follow, so that no one could ever hurt them and harm them and they could be conserved and protected. This was the story of the Ancient time, in which to protect the animals instead of rules and laws, they used to assign deity or a God to the animal, in order to conserve them and to let them live. However, with the rolling of the time coaster, things eventually changed but shadows of this tradition and culture are still reflected in the modern world.

In the Buddhist Mythology, the Jatakas or the stories of the Buddha's previous life are replete in several incarnations of the Bodhisattvaas an animal. Among the Jains, eighteen of the twenty four Tirthankaras have an animal as their cognizance. It is interesting to observe that the first, second and the eleventh Tirthankaras have a bull, an elephant and a rhinoceros as

⁴ See S.M. Nair, Cultural Traditions of Nature Conservation in India

⁵ See Madhav Gadgill, Environmental Protection, 1985

their cognizance⁶. Their antiquity could be traced to the Indus Valley periods. The famous Pashupati seal, for instance, shows a deity seated with a horned crown and surrounded by elephant, tiger, a rhino and a bull. On the other hand, those of the first, second, third and twenty fourth, viz. the bull, elephant, horse and lion make their appearance on the Ashokan pillar at Sarnath in the third century B.C. These instances show, that even during the time of Buddha, there were no rules or regulations but as he preached different aspects of living life, he included this in his ideology. He was against any kind of violation towards the animals and the nature, so he decided to preach it so that when people follow him as an idol and a son of God, they will also follow his principles of morality and in this way he preached nature and wildlife conservation.

In the next instance, we will talk about how Emperor Ashoka build onto the formal introduction of forest and wildlife conservation. It was about twenty five centuries ago Emperor Ashoka decreed that it was the king's duty to protect wildlife and the trees of the forests. He got edicts inscribed on rocks and iron pillars throughout his kingdom, prohibiting the destruction of forests, nature and the killing of various species of animals. This historical evidence, is the first recorded measure on conservation anywhere in the world, which means that despite the fact that the concept of conservation is not a new one, it is an honourable fact that it was an Indian evidence that showed of the concept of conservation first, ever in the world.

Later on during the reign of Babur, he inscribed in his Baburnama, the dominant image of the bird and even in the hymns of the Guru Nanak popularly known as Barmasa depicted each month with a dominant bird image. The study of King Jehangir's memoir showed that he had keen interest in and study of wildlife. Which means that even he would not have wanted to hurt or harm the nature and wildlife. The love for nature has been handed down the ages to the Indian men and women, which makes it an integral part of the Indian psyche. From days to months to years to centuries to ages, the concept of environmental conservation has been depicted or preached in some or the other form.

⁶ See Sadashiv Gorashankar, *Animals In India*, 1988

3. Constitutional Provisions For Environmental Conservation

3.1 Preamble

Indian constitution is one of the best written Constitution worldwide. The preamble of the Indian Constitution states the following :-

"WE THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a [SOVERIEGN 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"⁷.

At the very outset, the Preamble of the Constitution provides that our country is based on "Socialistic"⁸ pattern of society where the state pays more attention to the welfare of the society as a whole as its first priority and the welfare of the individual as the second. The basic aim of the socialism is to see the welfare of the society and to provide "decent standard of living to all", which includes a pollution free environment. We need to understand what is meant by the term "decent standard of living", it does not include all the luxuries, that we humans are striving hard for, it includes the basic things, such as water, air, shelter, education and by air and water we mean clean water and pollution free air, which is very essential for living. If we inhale, the polluted air, we might be infected with several harmful diseases and if we intake bad quality of water or in other words contaminated water, we may be infected

⁷ P.M.Bakshi, The Constitution Of India, Preamble, p.1

⁸ The word "Socialist" was added to the preamble by the Constitution(Forty Second Amendment Act) 1976.

with some very harmful diseases which will eventually effect the quality of life we live in. It means pollution free environment as a whole. Pollution is one of the social problems and the "State" is required under the Supreme Law to pay more attention to this social problem and march towards the avowed aim of just social order.⁹ This objective of the preamble is reflected clearly and in specific terms in part IV of the Constitution, dealing with directive principles of the State.

The Preamble also declares India to be a "Democratic Republic". In a democracy people have the right to chose their representatives and have the right to participate in all the decisions that the government takes. In this type of government they have the freedom to express their opinions and oppose if they wished to. People have the right to access the information of any kind, related to government policies and thus they have a right to question the environment they are living in. They can ask what the government is doing with regard to a cleaner environment and discuss, oppose, support and show affirmative action in response to the policies they make. It is very important for the success of environmental policies.

3.2 Federal System of the Government

The problem of environment is generally dealt by various statutes. Therefore, from an environmental point of view, the allocation of legislative authority is the very important. India has adopted a quasi federal system in which the governmental powers are shared between the Central Government, the State Government and the local level governments, but the main power rests with the Central and the State Government. Part XI of the Constitution (Article 245 to 263) regulates the legislative and administrative relations between the Union and the State. The subjects are divided among three lists, which are the Union List, State List and the Concurrent List. The Union List is the one, the subject matters of which are decided by the Central Government such as defence and airways, whereas the State lists is the one , the subject matters of which are decided by the State Government such as the forest department and the drainage etc. The Concurrent list on the other hand is the one list, the subject matters of which are common to both the Union and the State List.

⁹ Article 38 of the Constitution of India mandates the State to secure a social order for the promotion of the welfare of the people.

The Union List contains 97 subjects over which the Parliament alone has the power of legislation. Parliament also has the residual power of legislation on any matter which is not covered by any of the three lists.¹⁰ The subject matter included in the Union List, inter alia, include atomic energy and mineral resources, defence, UNO, participation and implementing the decisions in the International conferences, treaties and agreements with foreign countries, inter-state transportation, shipping, major ports, regulation of air traffic, industries, the control of which by the Union is in public interest, regulation and development of oilfields and mineral oil resources, regulation and development of inter State rivers and fishing.¹¹

The State List contains 66 subject matters over which the State legislature of different states have the exclusive power of legislation subject to their territorial limitation. The subjects mentioned in the State list, inter alia , include public health, sanitation, hospitals and dispensaries, agriculture, ponds, water supply, irrigation and drainage.¹² thus the subject matters of the State, the environmental impact of which has local , are left to be tackled at the local level.

The Concurrent List contains 52 subjects over which both the Parliament and State legislature, of different states have the jurisdiction to make laws. The subjects mentioned in the concurrent list, inter alia, include forests, protection of Wild animals and birds, population control and family planning, minor ports, factories and boilers.¹³ Thus, the subject matters, the environmental impact has a local as well as national bearing, are left to be tackled by the Centre as well as the State. Article 254 removes the inconsistency which may arise between the laws made by the Parliament and the laws made by the legislatures of different States. It provides when a Central law conflict with the State, the Centre shall prevail. However, the State law passed subsequent to the Central law will prevail if it has received the assent of the President under Article 254.¹⁴

Thus from the above scheme of the distribution , it is clear that decisions relating to the environment at both the local and national level are looked at by these lists, but the problem

¹⁰ See Entry 97 in the Union List.

¹¹ See Entries No. 6,7,9,12,13,14,22 to 30 and 52 to 57 of the Union List.

¹² See Entries No. 55,6,14,16,17 and 24 of the State List.

¹³ See Entries No. 17-A,17-B,20-A,31,36 and 37 of the Concurrent List.

¹⁴ See, Dr. P.S.Jaswal and Dr. Nishtha Jaswal, Environmental Law, p.44

that arises is that the Indian Government though seem to follow this pattern yet follows only matters regarding the finances with regard to the three lists and nothing beyond that, which ultimately serves as a loophole in the implementation of the provisions.

3.3 Fundamental Duties

The Constitution (Forty Second Amendment) Act, 1976, added a new part IV-A dealing with the Fundamental Duties in the Constitution of India.¹⁵ Article 51-A of this part enlists the ten Fundamental Duties. Article 51-A(g) specifically deals with the fundamental duty towards the environment. It provides :

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

Article 51-A(j) further provides :

It shall be the duty of every citizen of India to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievements.

The fundamental duties are intended to promote peoples' participation in restructuring and building a welfare society. The protection of environment is matter of constitutional priority. The problem is a concern of every citizen. Neglect of it is an invitation of disaster.¹⁶

Under Article 51-A(g) the citizen is under the duty to protect and improve the natural environment. But in the present days the pollution is caused not only by exploiting the natural environment but the man made environment also. It is the duty of every citizen of the country to protect the natural environment, in the sense that it is supposed to protect everything that is gifted to us by the nature and is available since the time we are born and we have seen that dilapidating in its condition due to human activities. Thus, it is pointed that the man has to preserve the nature the way it was given to us by the almighty and not what presently the situation is.

¹⁵ See Section 11 of the Constitution (Forty Second Amendment) Act, 1976 (w.e.f. 3-1-1977)

¹⁶ See V. Lakshmi pathy v. state, A.I.R. 1992 Kant. 57 at 66

Under article 51-A, only the citizens are under the obligation of fundamental duties. The parliament has used the word "citizen" instead of the word 'subject' to create the feeling of citizenship amongst the masses and also to see that the persons living in the country do not feel that they are subjects. We used to be subjects prior to the independence but after so much of hardship of the freedom fighters we gained independence and then the constitution was framed and we became citizens again, the way we were before getting colonised. The requirement of the time is that we should be the real citizens of the country striving towards excellence in all spheres of individual and collective activity including the protection of environment.¹⁷

In *Nature Lovers Movement v. State of Kerala*,¹⁸ there was diversion of forest land against which public interest litigation was filed. The government orders laid down conditions to regulate exploitation of the environment and natural resources but it did not impose total prohibition in the matter of enjoyment of environment. There was adjustment and reconciliation between the preservation of environment and development of the economy. The court held that all the steps taken by the central government as per the said orders did not stand against the concept of sustainable development and environment protection. Consequently it was held that the orders of the Government of India and consequent steps for the issue of title deeds to occupants were not opposed to Article 48-A or 51-A of the Constitution.

In *Goa Foundation v. State of Goa*,¹⁹ The Bombay high Court examined the question of 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(g) to protect and improve the natural environment including forests, lakes, rivers, and wildlife and to have compassion for living creatures. The question before the court was whether such a society also has the same duties. The court answered this question in an affirmative way and held that such a society also has the same duties. On the basis of this, the petitioner society was held to have a locus standi to move to the court to prevent ecological degradation, to

¹⁷ See *L.K. Koolwal v. State*, AIR 1988 Raj. 2

¹⁸ A.I.R. 2000 Ker. 131

¹⁹ A.I.R. 2001 Bom. 318 at 319

formulate and implement programmes for rehabilitation of environment and to restore ecological balance. If protection and improvement of the environment is a constitutional duty of every citizen, there is hardly a need to impose restrictions or limitations on public interest litigation in the area of environmental litigation.

In *Mirzapur Moti Kureshi Kassab Jamat*²⁰, it was observed that while Article 48-A speaks of the environment, Article 51-A(g) employs the expression 'the natural environment' and then includes therein 'lakes, forests, rivers and wildlife'. While Article 48 provides for cows and calves and other milch and draught cattle, Article 51-A(g) enjoins it as a fundamental duty of every citizen "to have compassion for living creatures", which in wider fold embraces the category of cattle spoken of specifically in Article 48.

3.4 Directive Principles of State Policy

Part IV of the Indian Constitution deals with directive principles of State policy. They represent the socio-economic goals which the nation is expected to achieve. The directive principles form the fundamental feature and the social conscience of the constitution and the constitution enjoins upon the State to implement these directive principles.²¹ These principles are designed to guide the destiny of the nation by obligating three wings of the State, i.e., legislature, judiciary and executive to implement these principles.

Article 47 of the Constitution is one of the Directive Principles of the State policy and it provides that the State shall regard the raising of the level of nutrition and standard of living of its people and the improvement of public health as among its primary duties. The improvement of public health also includes the protection and improvement of the environment without which public health cannot be assured.

The Constitution (Forty Second Amendment) Act, 1976, added a new directive principle in Article 48-A dealing specifically with protection and improvement of environment. It provides :

²⁰ (2005) 8 SCC 534 at 567

²¹ See *State of Kerala v. N.M. Thomas*, (1976) 2 SCC 310 at 379

The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.²²

Thus, Indian Constitution became one of the rare constitutions of the world where specific provisions were incorporated in the Supreme Lex putting obligations on the State as well as the Citizens to protect and improve the environment. This certainly is a positive development in the Indian law. Just that it should be read in the light of Fundamental Rights.

The State cannot treat the obligations of protecting and improving the environment as mere pious obligation. The directive principles are not mere show pieces in the window dressing. They are fundamental in the governance of the country and they being part of the Supreme Law of the land, have to be implemented.

The Directive principles serve the courts as a code of interpretation. The Fundamental rights should be interpreted in the light of the directive principles and the later should, whenever and wherever possible, be read into the former.²³ In other words, Part III dealing with Fundamental Rights and Part IV dealing with the directive principles are complementary and supplementary to each other.²⁴

In *T. Damodhar Rao v. S.O. Municipal Corporation, Hyderabad*²⁵, the Court pointed out that in view of Articles 48-A and 51-A(g), it is clear that the 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.²⁶

In *M.C. Mehta v. Union of India*²⁷ (popularly known as CNG case) the court observed that Articles 39(e), 47, and 48-A by themselves and collectively cast a duty on the State to secure the health of the people, improve public health and environment.

3.5 Fundamental Rights

²² Inserted by the Constitution (Forty Second Amendment) Act, 1976, section 10

²³ *A.B.S.K. Sangh v. Union of India*, AIR 1981 SC 298

²⁴ *Unni Krishna v. State of A.P.*, (1993) 1 SCC 645.

²⁵ AIR 1987 A.P. 171

²⁶ *Ibid.* at 181

²⁷ (2002) 4 SCC 356.

Principle 1 of the Stockholm declaration finds reflection in Articles 14,19 and 21 of the Constitution of India dealing with the right to equality, freedom of expression and right to life and personal liberty respectively.²⁸ In order to treat a right as Fundamental right, it should not necessarily be stated in the Fundamental rights or the Part III of the Indian Constitution. the provisions of the Part III and Part IV, dealing with the fundamental rights and directive principles respectively, are supplementary and complementary to each other. Fundamental Rights are means to achieve the goals indicated in part IV of the Indian Constitution and thus must be construed in the light of the Directive Principles i.e. the Part IV.²⁹

3.5.1 Right to Life and Right to Healthy Environment

Article 21 of the Constitution states that every individual has the right to life and personal liberty except according to the procedure established by law. So, it guarantees all people "Right to life and Personal Liberty".³⁰ This Article though involves negative implications but also include more of positive implications such as right to healthy environment. It includes other aspects too which are just and reasonable and if something unreasonable or unjustified is included in it, will be considered as void. Any law which goes against the Fundamental Rights will be considered as void ab initio.

Article 21 is the heart and soul of fundamental rights and has received expanded meaning from time to time and from case to case. As the time rolled on, it has expanded its wings and given and brought into light the various aspects which could be considered within its ambit. For healthy existence and preservation of the essential ingredients of life , stable ecological balance is required. Article 21 guarantees a fundamental right to life - a life of dignity , to be lived in a proper environment, free of danger of disease or infection. It is an established fact that there exists a close link between the life and the environment. The talk of fundamental

²⁸ Principle 1 of the stockholm declaration says 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, and he bears a solemn responsibility to protect and improve the environment for present and future generations.

²⁹ See Unni krishnan v. State of A.P., (1993) 1 SCC 645 at 730

³⁰ Article 21 provides in : "no person shall be deprived of his life or personal liberty except according to the procedure established by law"

rights and in, particular , right to life and personal liberty would become meaningless if there is no healthy environment.³¹

In *M.C. Mehta v. Union of India*,³² The Supreme Court held that right to have a living atmosphere congenial to human existence is a part of the right to life. The state has a duty in that behalf and to shed its extravagant unbridled sovereign power and to forge its policy to maintain ecological balance and hygienic environment. the hazard to health and environment of not only the persons residing in the illegal colonisation area but of the entire town has to be taken into consideration.

In *N.D. Juyal v. Union of India*³³, The Supreme Court has once again reiterated that right to clean environment and right to development are integral parts of the Human Right covered under Article 21 of the Constitution. Therefore, the concept of "Sustainable development" is to be treated as an integral part of life under Article 21. the weighty concepts like intergenerational equity, public trust doctrine and the precautionary principle, which have been declared as inseparable ingredients of our environmental jurisprudence, could only be nurtured by ensuring sustainable development.

3.5.2 Right to Livelihood

The judicial grammar of interpretation has further broadened the scope and ambit of Article 21 and now "Right to Life" includes the "right to livelihood". 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.

In *M.C. Mehta v. Union of India*³⁴, The Supreme Court followed the path of sustainable development and directed the industries operating in the Taj Trapezium zone, using coke/coal as industrial fuel must stop functioning and they could relocate to another location but not near the Taj Mahal. In this case, the SC also specified the rights and benefits to which the

³¹ See P.S. Jaswal, *Development in Environment Law : the case of India*, proceedings of the workshop on Development and Planning, Vol. II, SOAS, The Centre for Asia and Africa, University of London, London (January 6th to 18th,1992)

³² (2004) 6 SCC 588

³³ (2004) 9 SCC 362 (Tehri Dam Case)

³⁴ (1997) 2 SCC 353 (The Taj Mahal Case)

workmen of such industries were entitled and thus, protected their right to livelihood³⁵ and followed the guiding principles of sustainable development.

In *N.D. Jayal v. Union of India*³⁶, the SC while considering various issues of Tehri Dam Project observed that the oustees and displaced persons from the Tehri Dam area have a right under Article 21 of the constitution to lead a decent life and earn livelihood in rehabilitated locations. Rehabilitation is not only about providing just food, clothes or shelter. It is also about extending the support to rebuild livelihood ensuring necessary amenities of life. Accordingly it was directed that rehabilitation of oustees, which is natural corollary of Article 21, should take place within six months before submergence of the area.

Thus from the various decisions of the Supreme Court it is evident that development is not antithetical to the environment. However, thoughtless development can cause avoidable harm to the environment as well as it can deprive the people of their right to livelihood.

3.5.3 Fundamental Freedom of Speech and Expression.

Article 19(1)(a) guarantees every citizen a fundamental freedom of speech and expression.³⁷ In India most of the environmental cases are dealt and filed with the help of Public Interest Litigations so that people have a right to express their concerns about the environment and exercise their right to freedom of speech and expression, sometimes even by writing letters to the Court or otherwise filing petitions before it, highlighting the violation of rights of the people to live in healthy environment in one way or the other.

In *A.P. Gunnies Merchants Association, Hyderabad v. Government of A.P.*³⁸, the Andhra Pradesh High Court held that 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 environmentally safer place are valid and not violative of the Article 19(1)(g) of the Constitution.

³⁵ Id. at 384-385. See Also *Jagannath v. Union of India*, (1997) 2 SCC 87 at 150.

³⁶ (2004) 9 SCC 362.

³⁷ However, this freedom is not absolute. It is subject to "Reasonable restrictions" which can be imposed under Article 19(2) of the Constitution.

³⁸ AIR 2001 A.P. 453.

In *Waseem Ahmed v. Union of India*³⁹, the SC, in order to protect monuments and religious shrines, directed the shifting of shops to a distance of 750 metres away from religious shrines.

Thus the perusal of the above cases it is evident that the judiciary has treated the condition of protection and preservation of environment and wildlife as a reasonable restriction in the public interest on the fundamental freedom under Article 19(1)(g) of the Constitution.

3.5.4 Right to Equality

Article 14 of the Constitution provides:

The state shall not deny to any person equality before the law or equal protection of the laws within the territory of India.

the right to equality enshrined in the Article 14, inter alia, strikes at "arbitrariness" of any governmental action "because an action that is arbitrary must necessarily involve a negation of equality."⁴⁰ In fact, the equality and arbitrariness are sworn enemies. the principle of non arbitrariness pervades article 14 like a brooding omnipresence. Whenever there is arbitrariness in State Action, whether of the legislative or of the executive or of an authority under article 12, article 14 immediately springs into action and strikes down such action.

In *Ivory traders & Mfg. Assn. v. Union of India*⁴¹, The Delhi High Court justified the ban on business in animal species on the verge of extinction. The Court held that the ban on trade in imported ivory and articles made therefrom is not violative of Article 14 of the Constitution of India and does not suffer from any of the mala fides, namely unreasonableness, unfairness and arbitrariness.

In *Moulana Mufti Syed Md. Noorur Rehman Barkati v. State of West Bengal*⁴², The court held that where it had imposed restrictions on the use of microphone, the Central Pollution Control Board and the State pollution Control Board had to carry them out. Simply because no such former restriction had been imposed in other parts of India and the Fundamental rights under Article 19(1)(a) was enforced strictly in the State of West Bengal and it was not

³⁹ (2002) 9 SCC 472.

⁴⁰ *Ajay Hasia v. Khalid Mujib*, AIR 1981 SC 487 at 499

⁴¹ AIR 1997 Del. 267

⁴² AIR 1999 Cal. 15 at 29

enforced in other parts of India that does not amount to any case of discrimination under Article 14 of the Indian Constitution. Article 14 can also be invoked to challenge the government action where the permission for mining and other activities with high environmental impact is granted arbitrarily.⁴³

4. Recommendation as need to establish Environmental Courts

There are number of cases involving issues such as environmental pollution, ecological destruction and conflict over natural resources are increasingly coming up for adjudication and these cases involve assessment and evaluation of scientific and technical data, the Supreme Court has suggested the setting up of Environmental courts on the regional basis with one professional judge and two experts drawn from the Ecological science Research group keeping in view the nature of the case and expertise required for its adjudication. There would be course be right to appeal to Supreme Court from the decision of Environment Court.⁴⁴

The Supreme Court had asked the High Courts to constitute a Special bench called the "Green bench" to monitor and deal with cases one environmental matters.⁴⁵ Green benches are already functioning in some of the High Courts such as Calcutta, Madhya Pradesh, Madras, Allahabad and Punjab and Haryana High Courts. The Supreme Court has also suggested that environmental issues should be raised before the High Courts first, within the prescribed jurisdiction of the High Courts. The high court is in a better position to monitor the case.⁴⁶ The Supreme court has again reiterated the need for creating the environmental courts which alone should be empowered to take the environmental cases, at all levels. According to SC these courts should be managed by legally trained professionals in the field.

In *Chhida Singh Jat v. Suresh Chand Tyagi*⁴⁷, The Supreme Court upheld the punishment of three months simple imprisonment and a fine of Rs.5000/- imposed on the oofficer of the municipality, who was in charge at the relevant time, for not regulating a "nala" which was

⁴³ See For example *Kinki Devi v. State of H.P.*, AIR 1988 H.P. 4 at 9.

⁴⁴ *M.C. Mehta v. Union of India*, AIR 1987 SC 965 at 982.

⁴⁵ *Vellore citizens welfare forum v. Union of India*, (1996) 5 SCC 647 at 669.

⁴⁶ See *Indian Council for Enviro Legal Action v. Union of India*, (1996) 3 SCC 212 at 252

⁴⁷ (2005) 13 SCC 378.

polluting the fields and water in the wells of the villagers, in spite of orders of the High Court in this regard.

In *T.N. Godavarman Thirumalpad (98) v. Union of India*,⁴⁸ a PIL was filed by a public spirited person regarding the effect on the environment of the area as a result of the grant lease of the forest land for non forest activities in the violation of the law. Whereas the land in question was not a forest land. The court strongly deprecated the conduct of the petitioner and dismissed the petition with exemplary cost of Rs. 1 Lakh on the petitioner. The said cost, it was directed to be utilised for preservation of forests in the State concerned.

5. Recommendations and Conclusions

Everything said and done, the Constitution has not left a single opportunity for us to question whether there is a provision for the betterment of environmental conditions.

(i) Some things need to be worked upon such as the Directive Principles are to be read in the light of fundamental rights and they are to be enforced so that, they have some judicial appreciation and application.

(ii) Also, the Fundamental Duties should be enforced getting enshrined in Article 21 itself, so that overall impact of the application gets more fair and just.

(iii) It is evident that the judiciary has used the potent provisions of the constitutional law to develop a new environmental jurisprudence.

(iv) New Environment Courts are a suggestion of the Supreme court and would help to reduce the pendency of the cases and set a benchmark in itself in the field of Environmental Jurisprudence in the country.

(v) The courts have not only created the public awareness regarding environmental issues but also it has brought about an urgency in executive lethargy, if any, in particular cases involving environmental issues.

⁴⁸ (2006) 5 SCC 28.

