

Analysis of Articles 48A & 51-A (g) of the Constitution of India

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Abstract

The research paper discussed about the provision of Art. 48A & Art. 51-A (g) of our Constitution and tries to outline the importance of these Articles and the role played by them to develop the environmental jurisprudence in India. The research paper also talks about 42nd Amendment 1976 which inserted Art. 48A and Art.51(g) in the Constitution. The importance of these two Article lies in the fact that the Constitution of India speaks directly to protect and preserve our environment and it is the duty of the citizen to protect the environment in order to make the whole country a suitable place to live in. The paper also tries to discuss some of the case laws which is related to environmental law and Art.48A & Art.51 (g). In a nutshell, it can be said that the research paper discuss about Art. 48(A) Directive Principles of State Policy, Art. 51A(g) Fundamental Duties, out of the various Fundamental Duties mentioned in Art.51A, Art.51A(g) is very important in terms of environmental law since it says that it is the duty of Indian citizen to protect its surrounding and environment and it also discuss about the 42nd Amendment, 1976. The research paper comes to the conclusion that the 42nd Constitutional Amendment Act, 1976 was essential for the development of environmental laws in India and to protect the country from the environmental hazards caused due to the land pollution, water pollution, and air pollution. The research paper also finds that it is not only the duty of government to take care of the natural surroundings and environment but the citizen of the country are also responsible for the protection of its surrounding and environment. The research paper followed the doctrinal method of research to find its conclusion.

Analysis of Articles 48A & 51-A (g) of the Constitution of India

Introduction

A written Constitution can be defined as a document which is written down in the form of a Constitutional document and where the provision of the Constitution is elaborately explained and synchronized in a systematic manner. It is seen that most of the modern Constitutions are written down and the unwritten Constitution is followed by few countries. United Kingdom (U.K.) has an unwritten Constitution and the convention followed over years became their rule or the mandate of the Constitution. The United States of America U.S.A. wrote its Constitution in 1787, Canada in 1867, and Australia in 1900. The U.S. Constitution is a short, compact and organic instrument which shuns details.¹ The Constitution can be called as an organic living document. Its outlook and expression

¹ “The Constitution of the United States is not a prolix document, Words are sparingly used; and often a single phrase contains a vast arsenal of power.” DOUGLAS, FROM MARSHALL TO MUKHERJEA, 146 (Tagore Law Lectures, 1956).

mentioned in the Constitution by the interpreters of the Constitution must be dynamic and should be able to adjust with the changing times and progress of development in the society. It is clearly visible that the basic and fundamentals of the Constitution cannot be altered, the interpretation of the flexible provisions of the Constitution must be accompanied by dynamism and lean, in case of conflict, the Constitution provision must be in favour of the weaker or the one who is needy.²

The Constitution of India which was drafted after India got independence in 1947 is a lengthy, elaborate and detailed document. The Constitution of India when it originated it consists of 395 Articles in 22 parts and eight schedules. It is probably the longest written constitution written in the world. It came into effect on January 26, 1950, the day that India performs its Republic Day. The number of articles at present has increased to 448 as the constitution of our country has undergone 104 amendments and also the Constitution of our country at present have 25 parts and 12 schedules.

The State agencies till 1986 have the exclusive responsibility to implement the environmental law and prosecute the offender or the wrongdoer in general criminal courts but after the implementation of the Environment (Protection) Act, 1986³ the scenario in the environmental law and its punishment has a tremendous change. At present the enforcement techniques have been strengthened and broaden. These laws now permit private prosecutions upon the violators or offenders and more significantly, empower those agencies to shut down polluting industries or factories and even stringent action can also be taken like stopping the supply of water and power to the offender premises. This method gives quick results because it combines in a single State agency, rather than the old divided enforcement scheme that required both administrative and judicial stress to discipline violators or the wrongdoer.⁴

The fact that the Indian Constitution was made in the mid-twentieth century gave an advantage to its founders in so far as they could take cognizance of the various constitutional processes operating in different countries of the world and analyze those concept and thus have a clear concept of the various constitution of the country and upon a rich fund of human experience, knowledge, wisdom, heritage and traditions in the area of governmental process in order to fashion a system which is suitable to the political, social and economic conditions in India.⁵

The Constitution of India is one of the few constitutions in the globe that contains specific provisions on environment protection and improvement. The directive principles of State policy and the

² State of W.B. –vs- Kesoram Industries Ltd., (2004) 10 SCC 201: AIR 2005 SC 1646.

³ The Environment (Protection) Act was enacted in 1986 with the objective of providing for the protection and improvement of the environment. It empowers the Central Government to establish authorities [under section 3(3)] charged with the mandate of preventing environmental pollution in all its forms and to tackle specific environmental problems that are peculiar to different parts of the country. The Act was amended in 1991, Retrieved from http://cpcb.nic.in/env_protection_act/ accessed on 18th July 2022.

⁴ See, RAZENCZANZ, ARMIN, ENVIRONMENTAL LAW AND POLICY IN INDIA. P. 50 (Oxford University Press 1991).

⁵ The draft Constitution was criticized on the floor of the Constitution Assembly on the ground that most of it had been borrowed from other constitutions and that it could claim very little originality. In reply to this, Ambedkar observed: “One likes to ask whether there can be anything new in a Constitution framed at this hour in the history of the world. More than hundred years have rolled over when the first written Constitution was drafted. It has been followed by many other countries reducing their Constitutions to writing. What the scope of a Constitution should be has long been settled. Similarly, what are the fundamentals of a Constitution are recognized all over the world. Given these facts, all Constitutions in their main provisions must look similar. The only new things, if there can be any, in a Constitution framed so late in the day are the variations made to remove the faults and to accommodate it to the needs of the country”.

fundamental duties chapters explicitly enunciate the national commitment and effort to protect and improve the environment.⁶

The Constitution (Forty-second Amendment Act) of 1976 explicitly incorporated the provision for environment protection and improvement. The 42nd Amendment Act has made an amendment to the preamble and included the concept of socialism to the preamble of the Constitution. The Socialist pattern of societies signifies that the role of the state is to pay more attention on the societal problems rather than on individual problems. The problem today related to our environment is of pollution whether to say of air pollution, water pollution and land pollution and these problems can be called as social problems since it not only affect an individual but it affect the whole society so our constitution has incorporated the provision of Article 48A and Article 51A (g) in order to address this social problem.

42nd Amendment Act, 1976

The Constitution (Forty-second Amendment) Act, 1976, is the most controversial and debatable piece of constitutional amendment ever undertaken in India since 1950.⁷ The Amendment was primarily made by the Congress Party the then ruling party and the amendment most of the provision comprised most of the proposal made by a Committee of the party headed by Swaran Singh⁸. It was an omnibus measure introducing modification in a number of constitutional provisions. This Amendment amended the Preamble of the Constitution, 40 Articles and the Seventh Schedule, and added 14 new Articles to the Constitution. A fundamental objection against this Amendment Act is that it was undertaken during the emergency period when most of the members of the opposition were detained in preventive detention and when a free, frank and fair discussion of the arguments for and against the proposed modifications was not possible The two Houses of Parliament consisted of an overwhelming majority of the members of the ruling Congress Party and so it became more or less a party affair rather than a product of national consensus.⁹

The Amendment Act introduced various changes in the Constitution, some of which happened to be of great significance in so far as they sought to tilt the balance of power in favor of the executive and take away the power from the judiciary and the legislature so that the control mechanism over the executive gets weakened and in other words the executive tried to gain supremacy over the other two organ of the government. The dominant thrust of the Amendment Act in question was to reduce the function of the courts, particularly, that of the High Courts, in the country's judicial and constitutional process. It also sought to strengthen Parliament in various ways which in effect added to the power of the Central Government. Besides, the powers of the Central Government were enhanced in various dimension so that the Central Government becomes more strong on decision making power and no other organ of the country can interfere with its decision The main reasons stated by the Law Minister on behalf of the then Central Government in justification of the various modification being effectuated in

⁶ See, S.Indira Devi, *Law on Environmental Pollution-A Review*, Vol 2 SCJ P.60, 1995.

⁷ This Act received the assent of the President on December 18, 1976. Some of the provisions became operative on Jan 3, 1977, while others were enforced from Feb.1, 1977.

⁸ Sardar Swaran Singh Committee was set up by Congress Party in 1976 to make recommendations about fundamental duties, the need and necessity of which was felt during the operation of the internal emergency retrieved from <https://byjus.com/ias-questions/what-is-swaran-singh-committee-accessed-on-25/10/2022> at 11.46am.

⁹ JAIN M. P., INDIAN CONSTITUTIONAL LAW, 1814, LexisNexis Butterworths Wadhwa Nagpur (sixth edn. reprint 2012).

the Constitution by the 42nd Amendment Act were, the Supremacy of the Parliament should be asserted, especially in respect of its constitutional power under Art.368 which should be uncontrolled and subject to no judicial review, hurdles and obstacles in the way of enactment of socio-economic legislation should be removed so that the pace of improvement of the condition of the masses may be accelerated and this could be achieved by declaring that the Directive Principles override the Fundamental Rights; the sense of confrontation between the judiciary and Parliament should be removed and to achieve this, powers of the courts need to be curtailed somewhat and jurisdiction of the courts redefined with greater precision.

Directive Principle of State Policy (Art 48A)

Part IV of the Indian Constitution talks about the Directive Principle of State Policy. Art 36 to Art51 of the Constitution of India mentions about the Directive Principle of State Policy. Article 48 of the Constitution of India says that the “state shall endeavour to organize 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”. Article 48A says that “state shall endeavour to protect and to safeguard the forests and wild life of the country”.

Article 47 of the Constitution of the India provides that improvement of public health is one of the primary duties and responsibility of the State. As a sequel to the decisions taken at the U.N. Conference on Human Environment held at Stockholm in 1972, 42nd Amendment Act, and 1976 added Article 48-A which states, “The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.”

Article 48A obligates the state to endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. There is at present a growing consciousness and awareness that suitable measures be adopted to protect the environment, forests and wildlife of the country. To enable effective steps being taken for the purpose, wildlife and forests have now been placed in the Concurrent List¹⁰ so that the Central Government may play a meaningful role in this increasingly significant area and protect the forest and wildlife of the country.

The Supreme Court has clarified that whenever a problem of ecology is brought before the Court, it is bound to keep in mind Art 48-A and 51A (g) and cannot leave the matter entirely to the government. “The least that the Court may do is to examine whether appropriate considerations are borne in mind and irrelevance excluded. In appropriate cases, the Court may go further”¹¹

In Mehta¹² the Court has said: “Articles 39 (e), 47 and 48A by themselves and collectively cast a duty on the state to secure the health of the people improves public health and protect and improve the environment”. Notwithstanding adequate laws being in place, the Administration did not show much concern about environmental pollution. Accordingly, the Supreme Court has had to take an active

¹⁰ The Concurrent List comprises 52 items. The States are competent to legislate with respect to matters in the List, subject to the rule of repugnancy contained in Art. 254.

¹¹ *Shri Sachidanand Pandey v. State of West Bengal*, AIR 1987 SC 1109:1987(2) SCC 295.

¹² *M.C. Mehta –vs- Union of India*, JT 2002 (3) SC 527.

interest in this area.¹³ To protect environment and ecology the court can take affirmative action by mandating the State to take action for that purpose.¹⁴

Reading Art 21, Art 47, Art 48A and Art 51A (g) together, the Supreme Court has taken an active interest in the protection of the environment. Many questions pertaining to environment and ecology have been brought before the Court by way of Public Interest Litigation.¹⁵

The Courts seek to draw a balance between preservation of environment and sustainable development. The Courts have to adjust and reconcile between the imperatives of preservation of the environment and the development of the economy.¹⁶

Three principles, viz “Precautionary Principle”, the “Polluter Pays Principle” and the doctrine of “public trust”¹⁷ have been developed by the Supreme Court. It has been repeatedly held that “natural resources including forests, water bodies, rivers, seashores, etc, are held by the State as a trustee on behalf of the people and especially the future generations. These constitute common properties and people are entitled to uninterrupted use thereof. The State cannot transfer public trust properties to a private party, if such a transfer interferes with the right of the public and the Court can invoke the public trust doctrine and take affirmative action for protecting the right”.¹⁸ In *M.C. Mehta –vs- Union of India*¹⁹ the Supreme Court has issued several directions in order to protect Taj Mahal from deterioration on account of environmental pollution.

Fundamental Duties (Art 51A)

Rights and duties are correlative. The fundamental duties, are, therefore, intended to serve as a constant reminder to every citizen that while the Constitution specifically conferred on them certain fundamental rights, it also requires citizens to observe certain basic norms of democratic conduct and behavior. It was claimed by the ruling party the Congress that what the framers failed to do was being done now. The omission is being rectified by providing a Chapter on citizen`s duties.²⁰

It is submitted that this view is wrong. The performance of one`s duties even in partial disregard of one`s rights and privileges has been traditional in this country. Since time immemorial the emphasis in Indian Society in accordance with the dictates of the ancient scriptures has been on the individual`s

¹³ When the level of air pollution in Delhi increased to such an extent as to endanger the public health, and the State Government did nothing in spite of the existence of adequate law, the Supreme Court issued directions for changing public transport from diesel to CNG. The matter came before the Court from time to time. See *M.C. Mehta v. Union of India*, (2002) 4 SCC 356; *M.C.Mehta v. Union of India* (2002), 4 SCC 378.

¹⁴ *Formento Resorts and Hotels Limited v. Minguel Martins*, (2009) 3 SCC 571; AIR 2009 SC 2049.

¹⁵ *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*, AIR 1987 SC 359; 1986 Supp SCC 517; *Indian Handicrafts Emporium v. Union of India*, (2003) 7 SCC 589; AIR 2006 SC 1350.

¹⁶ See, *Banwasi Seva Ashram v. State of Uttar Pradesh*, AIR 1987 SC 374; (1986) 4 SCC 753; *Nature Lovers Movement v. State of Kerala*, AIR 2000 ker 131; See also *Sushanta Tagore v. Union of India* (2005) 3 SCC 16.

¹⁷ *M.C. Mehta v. Kamal Nath*, 1997 1 SCC 388; *Intellectuals Forum v. State of A.P.* (2006) 3 SCC 549; *Formento Resorts & Hotels v. Minguel Martins*, (2009) 3 SCC 571.

¹⁸ *Fomento Resorts & Hotels v. Minguel Martins*, (2009) 3 SCC 571.

¹⁹ AIR 1997 SC 734; *Vellore Citizens Welfare Forum v. Union of India*, (1996) 7 JT (SC) 375; 1996) 5 SCC 647; *Indian Council for Enviro-Legal Action v. Union of India* (1996) 2 JT (SC) 196; *Intellectuals Forum v. State of A.P.* (2006) 3 SCC 549; AIR 2006 SC 1450.

²⁰ PANDEY J.N. CONSTITUTIONAL LAW OF INDIA, Pg. 407, 44th Edi. (Central Law Agency, Allahabad, 2007).

“Kartavya”, this is, performance of one’s duties towards society, the country and especially towards one’s parents. The Gita and the Ramayana enjoin people to perform their duties without caring for their rights or (fruits).²¹

These traditional duties have been given constitutional sanction. “If one takes care to see, he will discover in the Constitution not only his rights but also his duties. A look at the Constitution will also thus answer the complaint of some persons that Constitution has conferred rights on the individual but has not set out the duties of the individuals towards the society.”²²

It was argued that in India people lay emphasis only on rights and not on duties. The Constitution (Forty-second) Amendment Act, 1976, breaks new ground by introducing the innovative concept of Fundamental Duties of the Indian citizens in the Constitution. For this purpose, a new Part IV A consisting of Art.51A has been added to the Constitution. Art 51A lays down the following ten fundamental duties:

- (a) “To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- (b) To cherish and follow the noble ideals which inspired our national struggle for freedom;
- (c) To uphold and protect the sovereignty, unity and integrity of India
- (d) To defend the country and render national service when called upon to do so.
- (e) To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional diversities; to renounce practices derogatory to the dignity of women.
- (f) To value and preserve the rich heritage of our composite culture;
- (g) To protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures;
- (h) To develop the scientific temper, humanism and the spirit of enquiry and reform;
- (i) To safeguard public property and to abjure violence
- (j) To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.
- (k) Who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.”²³

Article 51A refers only to the Indian citizens and it is the duty of Indian citizen only to follow Art. 51A. Now some of the Fundamental Rights are only for Indian citizen for e.g. Art 19 but some Fundamental Rights, e.g., Art 14 to Art 21, which apply to all persons whether citizens or non-citizens.

Art. 51A which provide different clauses and these clauses express fine sentiments and it arise the feeling of patriotism in our heart and love for the country. Some of the above duties are already being enforced through ordinary law, e.g., there are laws making any activity which disrupts the sovereignty and territorial integrity of India have to face legal consequences under the penal law of

²¹ Ibid.

²² V.S. Deshpande: *Rights and Duties under the Constitution*, Vol. 15, p.95 JILI.

²³ Introduced by the Constitution (Eighty-sixth Amendment) Act, 2002 ; Constitutionality of amendment upheld in Ashoka Kumar Thakur v. Union of India, (2008) 6 SCC 1, at page 317: (2008) 5 JT 1.

India. Article 31C also enables Parliament to make suitable laws to enforce some other duties e.g. (e) But some of the other duties, mentioned above, appear to be legally unenforceable for they are vague and imprecise. For example, duties contained in (b), (f), (h) and (j) do not convey any definite ideas or ideals nor appear to be capable of legal enforcement. These can at best be regarded as “directory”. As regards enforceability of these duties, it has been held that these duties being duties of individual citizens cannot be enforced through mandamus,²⁴ as they cast no public duties. The duties can be promoted by constitutional means, Art 51A can be used to interpret ambiguous statutes.²⁵

Impact of Art 48A and Art 51 A (g) on Environmental Jurisprudence

The 42nd Amendment Act of the Constitution of India incorporates the provision of Article 48 A to our Constitution which has paved the way for development of environmental jurisprudence in India. India has made significant progress in its pursuit of environmental protection over the last decade. As an important first step, the government has officially accepted the coexistence of economic development and environmental protection. The Forty-second Amendment Act also added entries to the concurrent list. The Act inserted a new entry, “Population control and family planning “, and moved “Forests” and “Protection of wild animals and birds,” from the state list to the concurrent list.²⁶ Some members of the Indian academic community believe that the Forty –second Amendment gave the central government new powers to protect the environment, powers that the center did not previously possess.²⁷

Indian Constitution is amongst the few in the world that contains specific provisions of environment protection. To take cognizance of right to environment as a human right many nations have adopted eco-centric approaches. In the context of human rights, right to life and liberty, pollution free air and water is guaranteed by our Constitution under Article 21, 48-A and 51 –A (g).²⁸ While classical human rights problems continue to be a major concern, new types of human rights problems have emerged as a result of rapid economic expansion and urbanization. They include environmental pollution and exploitation of their natural resources by developed countries and multinational corporations. In Japan, as clearly as 1967, the Basic Law for Environmental Pollution Control was passed. That law made it possible to sue private enterprises on civil grounds and also to take action in criminal law. In Japanese law, as in English Common Law, environmental pollution is called Public nuisance (Ko-gai) to give it a public character even if pollution is caused by private enterprises.²⁹

Besides the Indian Constitution, many other nations have also read environment in their constitutions. Article 26 of the 1982 Constitution of the Chinese Republic mentions:

²⁴ *Surya Narain v. Union of India* AIR 1982 Raj 1,7.

²⁵ *Mumbai Kangar Sabha v. Abdulbhai*, AIR 1976 SC 1455: (1976) 3 SCC 855; *Head Masters –vs- Union of India*, AIR 1983 Cal 448; *Dasarathi v. State of Andhra Pradesh*, AIR 1985 AP 136; *Mohan –vs- Union of India* (1972) Supp 1 SCC 594 also *P.A. Inamdar v. State of Maharashtra* (2005) 6 SCC 537.

²⁶ Ramakrishna Kilaparti, *The Emergence of Environmental Law in the Developing Countries: A Case Study of India*, *ECOLOGY LAW QUARTERLY*, Vol.12, 1985.

²⁷ JARIWALA, THE CONSTITUTION-42ND AMENDMENT ACT AND THE ENVIRONMENT, in S. Agarwal ed., *Legal Control or Environmental Pollution* pp, 1-7, 1980.

²⁸ *Charan Lal Sahu v. Union of India*, AIR 1990 SC 1480: (1989) Supp 2SCR 597 : (1900) SCC 613: (1989) 4JT 582: (1990) 1 Comp LJ 125.

²⁹ E.S. VENKATARAMIAH, HUMAN RIGHTS AND THEIR ENFORCEMENT IN MAHENDRA PSINGH’S, *COMPARATIVE CONSTITUTIONAL LAW-Festschrift* in honour of Professor P.K. Tripathi, p. 675, Eastern Book Company, Lucknow.

- I. “The State protects and improves the living ecological environment and prevents remedies pollution and other hazards to the public.”
- II. “The State organizes and encourages afforestation and protection of forests.”³⁰

Likewise Article 15 of the Constitution of Afghanistan states, “The State is obliged to adopt necessary measures for forests and the environment” and similarly Article 27 (14) of the Srilankan Constitution mentions “the State shall protect, preserve and improve environment for the benefit of the community.”³¹

In India the Directive principles and the Fundamental duties explicitly enunciate the national commitment to protect and improve the environment. More so environmental protection and improvement were further explicitly incorporated into the Constitution by the Constitution (Forty-Second Amendment) Act of 1976. The Act clearly spelt out in the amendment to the Preamble of the concept of socialism. In the socialistic pattern of societies the State pays more attention to the social problems that on any individual problems and pollution is one of them.

The Constitution of India makes three kinds of provision for the protection of environment. 1) directing and enjoying the duty on the state and Central Governments to protect and improve the environment. 2) imposing a duty on the citizen to protect, improve and abstain from polluting the environment. 3) giving fundamental right to live in a good environment and to move the Courts to enforce this right in case of infringement.

Thus Article 48-A and 51-A (g) have been used by the Courts against various kinds of pollutions. Thus whenever a problem of ecology is brought before the Court, the Court is bound to bear in mind Art 48 A. Between 1979 and early 1980`s, the Supreme Court of India assumed a new judicial function of redressing common grievances under the new criterion of justice has been called Judicial Activism and has been resorted to by the High Court`s as well. It has created public awareness in environmental matters and to large extent filled the lacuna of law in dealing with environmental issues due to lethargy or lagging behind of the executive or legislative action in the matter. The Judicial Activism and PIL have thus evolved a potent weapon to develop environmental jurisprudence.

As a result the floodgate of environment related litigations have been unleashed since then. A new and radically different kind of cases altered the litigation landscape. Instead of being asked to resolve private dispute, Supreme Court and High Court Judges are now asked to deal with public grievances over flagrant human right violation by State or to vindicate the public policies embodied in statutes or constitutional provisions. This new type of judicial dimension is called Public Interest Litigation.

In Animal and environment Legal Defence Fund –vs- Union of India,³² the Supreme Court directed the State government to take urgent steps to prevent destruction of damage to the environment, the flora and fauna and wild life in and around the sanctuaries of the National Park.

³⁰ Ibid 9.

³¹ Ibid 9.

³² AIR 1997 Sc 1071: (1997) 3 SCC 549.

In *Sitaram Chhaparia –vs- State of Bihar*³³ where a tyre retarding plant set up in a residential area was emitting carbon dioxide gas and other obnoxious gases from its furnace, and the Court observed the protection of the environment was a fundamental duty under Article 51-A of the constitution and directed the respondents to wind up the industry.

When large scale illegal, unauthorized, unscientific and unsystematic mining activities were undertaken in violation of the provisions of various enactments, rules framed and notifications issued there under and orders of the Supreme Court and High Court, the High Court issued further directions to the State Government to discharge the Constitutional obligations and duties for protection of environment and to implement provisions of various enactments in this regard and to ensure that no further environmental degradation³⁴ took place.

Judicial activism in this sphere has greatly contributed towards moulding of the law in the right directions of balancing sustainable development and right to environment. To achieve this judiciary has developed some principles by gathering support from international environmental law.

The Public Trust Doctrine enunciated in the *Spawn Motel Case*³⁵ as part of the Indian jurisprudence envisages, “the State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the seashore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private use.”³⁶

Precautionary Principle’s contribution is also substantial in this regard. By taking recourse to Article 48A and Article 51 A (g) in *M.V. Naidu’s* case the Supreme Court has observed, “The principle of precaution involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity. It is based on scientific uncertainty. Environmental protection should not only aim at protecting health, property and economic interest but also protect the environment for its own sake...”³⁷

In *Research Foundation Case*, it is observed by the Court, “it is part of principle of sustainable development, it provides for taking protection against specific environmental hazards by avoiding or reducing environmental risks before specific harms are experienced.”³⁸ A logical consequence of this principle is the Polluter pay principle.

This principle was upheld in *Vellore Citizen’s Welfare Forum versus Union of India*³⁹ and has been accepted as part of the law of India. Thus in order to protect the two lakes, namely, Badkhal lakes

³³ AIR 2002 Pat 134: (2002) 2 BLJ 526: (2002) 2 Pat. LJR 654 (DB).

³⁴ *Ashwini Chobisa v. Union of India*, AIR 2005 NOC 58 (Raj) (DB).

³⁵ *M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388.

³⁶ *Ibid*, as per J. Kuldip Singh.

³⁷ *A.P. Pollution Control Board v. M.V. Nayudu*, (1999) 2 SCC 718: AIR 1999 SC 812 at pp.820-21.

³⁸ *Research Foundation for Science, Technology National Resource Policy v. Union of India*, (2005) 10 SCC 510.

³⁹ (1996) 5 SCC 647.

and Surajkund Lake in the State of Haryana from environmental degradation, it became necessary to limit the construction activity in the close vicinity of the lakes.⁴⁰

Similarly in *Animal and Environment Legal Defence Fund –vs- Union of India*⁴¹ it had been emulating the case of *Pradeep Krishen –vs- Union of India* that the total forest cover in India is far less than the ideal minimum of one-third of total land. Thus no further shrinkage of forest cover can be allowed in India. Further it also ensured that if the reason of shrinkage is the entry of villagers and tribals living in and around the sanctuaries and the National Park in Madhya Pradesh, there can be no doubt those urgent steps must be taken to prevent the destruction of environment and the flora and fauna in those areas.

A similar effort of balancing was achieved by invoking the principles of Inter-generation equity in the matter of mining of stones that threatened survival of archaeological site in Kerala. The Kerala High Court upheld the petition for stoppage of the project and observed, “It is the duty of every citizen to protect and preserve the ancient and historic monuments for future generations. It is a basic source of study for the archaeologists and is of national importance which cannot be permitted in any way to be interfered with or affected.”⁴²

The case given below illustrates how the new scope of the judicial action has helped protection of environment and people from pollution.

In *Shri Sachidanand Pandey –vs- State of West Bengal*,⁴³ too the Supreme Court said, “Whenever a problem of ecology was brought before the Court, the Court was bound to bear in mind Articles 48-A and 51-A (g), it is evident that the protection of environment is not only the duty of citizens, but it is also the obligation of the State and all other State organs including Courts.”⁴⁴

The internationally acclaimed Tiger Reserve in the Aravalli Hills ecosystem of India was being destroyed by ambitious mining activities for recovering marble by the Government of Rajasthan. The Supreme Court of India in *Tarun Bharat Sangh (NGO) –vs- Union of India*⁴⁵ ordered the closure of all the four hundred marble mines around the Sariska Tiger Reserve which threatened wildlife, in accordance with the provisions of the Forest (Conservation) Act, 1980.

In yet another case, Silent Valley, the seat of rich biodiversity in the Western Ghats of India was threatened with destruction in the 1970s because of the construction of a dam for hydropower generation by the Government of Kerala. Upon the plea of Kerala Sastra Sahitya Parishad (KSSP), an NGO and World Conservation body, the judiciary in Kerala came to the rescue of the fragile ecosystem.⁴⁶ The

⁴⁰ *M.C. Mehta v. Union of Indianb*, (1997) 3 SCC 715.

⁴¹ *Animal and Environment Legal Defence Fund v. Union of India*, (1997) 3 SCC 549.

⁴² *Niyamavedi v. Government of India*, Kerala High Court, 6-11-1995.

⁴³ AIR 1987 SC 1109.

⁴⁴ AIR 1987 AP 171.

⁴⁵ AIR, 1992, SC 514.

⁴⁶ MK PRASAD SILENT VALLEY CASE : AN ECOLOGICAL ASSESSMENT In: P Leelakrishnan (Ed.): Law and Environment. Cochin, Kerala: University of Science and Technology, pp. 133-139, 1984.

construction of the dam was immediately stopped. If it had not been, the richest biodiversity in the world, after Amazonia, would have been completely destroyed.

Similarly in Ratlam Municipality –vs- Vardhichand⁴⁷ the residents of Ratlam Municipal area, suffering for a long time from the pungent smell from opens drains approached the Magistrate for a remedy. The Magistrate ordered the Municipality to remove the drains whereupon the Article 48-A and 51-a (g) and Article 21, issued the directions under section 113 of the Cr.P.C. to the Municipal council to provide proper drainage system.

Likewise in S. Jagannath –vs- Union of India⁴⁸ Supreme Court directed shrimp culture industry to stop operation in the ecological fragile coastal area as they were affecting environment and coastal ecology. It has been held that owing to commercial aquaculture farming there is degradation of the mangrove ecosystems, depletion of casuarinas plantation, pollution of potable waters, reduction in fishcatch and blockage of direct approach to the seashore.⁴⁹ The groundwater is contaminated due to seepage of impounded water from the aquaculture forms. Thus aquaculture industry operating within coastal regulation shall be liable to compensate the affected persons on the basis of “Polluter Pays Principle”.

In T.N. Godavarman Thirumalpad –vs- Union of India⁵⁰, a three-judge bench of the Supreme Court read Article 48-A and Article 51-A together as laying down the foundation for a jurisprudence of environmental protection and held that “Today, the State and the citizens are under a fundamental obligation to protect and improve the environment, including forests, lakes, rivers, wildlife and to have compassion for living creature.”

Reading Article 48-A with Article 51-A (g), 14 and 21 of the Constitution,⁵¹ the Supreme court had deduced the following conclusion:⁵²

- (a) It is a constitutional duty not only of the State but also of every citizen to protect and improve the environment and natural resources of the country.
- (b) Though neither Article 48-A and 51-A is judicially enforceable by itself it becomes enforceable by expanding the compass of Article 21, so that in case of a failure of the forgoing duties, the Supreme Court or a High Court would entertain a petition under Articles 32 and 226, as a PIL brought by an individual or institutions in the locality or any social action group, even by a letter addressed to the Court.
- (c) In order to realize it, the Supreme Court directed establishment of primary treatment plans for resumption of their functioning, measures to eliminate cleaning of city, protection of wildlife if sanctuaries and national parks, preservation of the Taj, restriction on fishing within the National Park Area, directions to Central Government to indicate measures taken under the Environment Protection Act, 1986, direction on utilization measures of the Taj for a concert, directions to tackle chaotic

⁴⁷ AIR 1980 SC 1622.

⁴⁸ AIR 1997 SC 811.

⁴⁹ (1997) 2 SCC 87.

⁵⁰ AIR 2003 SC 724: (2002) 10 SCC 606 referred in State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat, (2005) 8 SCC 534.

⁵¹ Subhash v. State of Bihar, AIR 1991 SC 420: (1991)1 SCR 5: (1991) 1 SCC 598.

⁵² JAGDISH SWARUP, CONSTITUTION OF INDIA, p. 1648, 2nd Edition, Modern Law Publications, Allahabad, (2010).

traffic, direction and vehicular pollution in Delhi. Compensation to workmen, segregation of chemical industries.

- (d) The Supreme Court directed the Central Government to state all the steps taken since the insertion of this Article 48A for the protection and improvement of environment and also place before the Court its national policy to restore the quality of environment.⁵³ It has now become the duty of the Central government to direct all the educational institutions throughout India to teach at least for one hour in a week lessons relates to the protection and the improvement of the natural environment including forests, lakes, rivers and wildlife in the first ten classes.

Conclusion

The Constitution of India is one of the few constitutions in the globe that contains specific provisions on environment protection and improvement. The directive principles of State policy and the fundamental duties chapters explicitly enunciate the national commitment and effort to protect and improve the environment. These problems can be called as social problems since they not only affect an individual but society as a whole. The insertion of Art. 48A and Art.51A(g) by the forty second amendment Act, 1976 is a good step taken by the legislature in order to develop the environmental concern of citizens towards their environment. Connecting human rights and environment is a valuable sourcebook that explores the uncharted territory that lies between environmental and human rights legislation. Human beings can ensure fundamental equality and adequate conditions of life in an environment that permits a life of dignity and well-being.

There is an urgent need to formulate laws keeping in mind the fact that those who pollute or destroy the natural environment are not just committing a crime against nature, but are violating human rights as well. Indeed, health has seemed to be the subject that bridges gaps between the two fields of environmental protection and human right. The advancement of the relationship between human rights and environment would enable incorporation of human rights principles within an environmental scope, such as anti discrimination standards, the need for social participation and the protection of vulnerable groups. So, to protect the environment of our country insertion of Art.48A and Art. 51A(g) is a good step of the legislature.

⁵³ M.C. Mehta v. Union of India, (1998) 9 SCC 589.