

CHAPTER V

CONSTITUTIONAL DOMAIN FOR THE MANAGEMENT OF BIO - MEDICAL WASTE

The culture of tolerance, non-violence which India has been enjoying and maintaining since ancient time has become part and parcel in the daily life of the people when the same has been synthesised with religion. It has been the belief of human kind that air, water, land, animals, plants and human being were considered as the creation of one superior power i.e. the God. The religious influence (as seen in the previous chapter) coupled with the social and political norms and economic policies made it clear that man is a part of nature that exists collaterally with it and are dependent on each other but is not superior in any way. Therefore, to live in harmony with the nature has become the fundamental ethics of human beings because it was well realised that destruction or damage to one is nothing but the destruction of self. Each one is complimentary to each other. Such interdependency, cooperative living and close association implies that one is complimentary to each other and is the real basis of human life. It became a sacred duty of human being to behave rationally and protect the nature. Wisdom of Vedas religious principles of Hindus and moral doctrine taught the lesson of co-existence between man and his environment through which later on became a part of the daily life of people¹. However, this does not mean that nature has never been the subject of exploitation in the hand of human being. The environment history of all countries of the world has shown the destruction of nature to fulfil human needs and comforts. This is inevitable and cannot be avoided. The economic development, which has been the prime importance of any country give rise to the necessity of taking the help and depending on the nature because without effecting the nature the so-called development is a misnomer. Therefore, in order to save the nature from human exploitation every country should come forward with fundamental Constitutional provisions to safeguard the nature *vis-a-vis* the environment from human encroachment.

The philosophy of such peaceful co-existence with the nature and sustainable development got verbatim in one way or another in Indian Constitution. The

¹ R. B. Singh and Suresh Misra, *Environmental Law in India: issues and Responses* pg. 102 (Concept Publishing Company, 1st Edn., 1996).

Independence of India in 1947 and the framing of the Indian Constitution in 1950 helped the nation to concentrate in activities related to economic development and greater emphasis was given on agriculture produce and industrialisation. Use of fertilisers, insecticides, pesticides was on increase and heavy industries in the field of steels, fertilisers, petroleum refining, ferrous and non-ferrous metals, mining heavy chemicals etc. were established. Numerous ancillary units followed. Industrialisation and economic upliftment give rise to problems of urbanisation, public health and others². The environmental issues in today's industrial society has become so serious and complicated that it constantly threatening the very existence of life which demanded an immediate solution to these problems and this can be met with the help of constitutional provisions. The Constitution of India also contained detailed provisions relating to protection and preservation of human environment which have been discussed hereinafter below.

The Constitution of India is the fountain head of power and authority and all other laws derive their force from it. The Constitution, being the fundamental law of the land has a binding force on citizens, non – citizens as well as on the State. Our Constitution is amongst the few and is the first Constitution³ in the world that contains specific provisions on environment protection. On the basis of such provisions various laws have been enacted for the protection of environment relating to flora and fauna. Although the idea for the protection of the environment had not been there in the minds of the founding father when the original provisions of the Indian Constitution were debated and approved in the Constitutional Assembly. However, the seeds of specific provisions on environment protection could be found in Article 47⁴ of the Directive Principles of State Policy (DPSP) and the Chapter which deals with Centre-State relationship⁵.

² Nosrat Ganjali, Masume Hafez Reza Zadeh *et. al.*, “An investigation on the participation rate of women in the urban environmental conservation” Vol. 3 Journal of Novel Applied Science pg. 303 (2014).

³ P.S. Jaswal and Nishta Jaswal, *Environmental Law* pg. 40 (Allahabad Law Agency, Faridabad, 3rd Edn., 2009).

⁴ The Article reads: “The State shall regard the raising of the level of nutrition and standard of living of its people and 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”.

⁵ Articles 245-286 of the Constitution of India.

Although these provisions incorporated the environmental issues in a formal way but the true efforts for the protection of environment began only after the Stockholm Conference held in June, 1972. Before this Conference, neither the Constitution nor any laws had expressly dealt with the problem of environment. It was only after this Conference that both constitutional and legislative reforms have been given effect to in India to meet and combat the environmental problems in the country⁶. Showing concern regarding the growing menace of the environment pollution in the Stockholm Conference the then Prime Minister of India Mrs. Indira Gandhi while displaying the nation's commitment to the protection of environment emphasised that,

“...for the developed countries development might be the cause of destructions of environment. For a country like India, it was a primary means for improving the standard of living to make available the food products, water, cleanliness, shelter, to bring about greenery in deserts and to make hills and mountains worth living”⁷.

The natural resources of the earth, including the air, water, land, flora and fauna and especially representative sample of the nature ecosystem must be safeguard for the benefits of present and future generations through careful planning or management. Nature conservation including wildlife must therefore receive importance in planning for economic development⁸. Therefore, to comply with the principles of the Stockholm Declarations adopted in the International Conference on Human Environment, the Government of India, by the Constitution Forty-Second (Amendment) Act, 1976 inserted Articles 48-A⁹ and 51-A(g)¹⁰ for the protection and promotion of the environment which form part of the DPSP and the Fundamental Duties respectively. The amendment, coupled with the Indian higher judiciary's innovative approach to the inter-relation of the constitutional provisions, has been the chief source of the development of environmental jurisprudence in India. It may be

⁶ Aruna Venkat, *Environmental Law and Policy* pg. 52 (PHI Learning Pvt. Ltd., New Delhi, 1st Edn., 2011).

⁷ S. K. Kapoor, *International Law* pg. 390 (Central Law Agency, Allahabad, 8th Edn., 2002).

⁸ Principle 2 of the Stockholm Declaration, 1972.

⁹ Article 48-A of the Constitution of India reads as follows: “The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country”.

¹⁰ Article 51-A(g) of the Constitution of India reads as follows: “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”.

appreciated that the Apex Court's liberal, innovative and dynamic interpretation of Articles 12, 14, 19, 21, 32, 48A, 51A(g), 136, 142, 144 and 226 of the Indian Constitution has been the cornerstone of the structure of the environmental jurisprudence in India¹¹. Apart from the above mentioned provisions the Indian Constitution contained various provisions relating to the environment that pervaded under different parts which can be better understood under the following heads:

1. The Preamble
2. Fundamental Rights
3. Directive Principles of State Policy (DPSP)
4. Fundamental Duties
5. Legislative Relations (Centre-State Relations)

5.1 The Preamble

The Preamble, no doubt, is not a specific provision of the Constitution, and yet is an important component as it defines the overall ethos, framework, goals, objectives and commitments of the people of India from a long historical perspective. In a sense, the specific provisions that follow as Articles are supposed to flow from and are operational on the basis of the general principles stated in the Preamble. All the broad principles enunciated in it have an indirect bearing on environment and thereby on health.

The wording of the Preamble highlights some of the fundamental values and guiding principles on which the Constitution of India is based. The Preamble plays pivotal role when there is ambiguity in provisions of any Article or interpretation becomes confusing. This is when the spirit of the Preamble becomes the guiding factor. The Preamble is stem, root and source of the Constitution. Chief Justice R.C. Lahoti in *P.A. Inamdar v. State of Maharashtra*¹² has highlighted the importance of the preamble in the following words:

“It is well accepted by thinkers, philosophers and academicians that if Justice, Liberty, Equality and Fraternity, including Social, Economic and Political

¹¹Aruna Venkat, *Environmental Law and Policy* pg. 52 (PHI Learning Pvt. Ltd., New Delhi, 1st Edn., 2011).

¹²(2005) 6 SCC 537.

Justice, the golden goals set out in the preamble to the Constitution, are to be achieved; the Indian polity has to be educated and educated with excellence. Education is a national wealth which must be distributed equally and widely, as far as possible, in the interest of creating an egalitarian society, to enable the country to rise high and face global competition¹³”.

The Preamble to the Constitution of India envisages the creation of a welfare state¹⁴. It declares India as a “Socialist” country, and this term itself gives a substantial proof of the existence of social welfare responsibilities of the government 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 environment¹⁵. In this connection the observation made by the Hon’ble Supreme Court in the case of *D. S. Nakara v Union of India*¹⁶ deserve special mention when it says-

“The principal aim of a socialist State is to eliminate inequality in income and status, and standard of life. The basic frame work of socialism is to provide a decent standard of life to the working people and especially provide security from cradle to grave”¹⁷.

Such standard of life would mean to lead a life without any ill effect on health and this would only be possible in an environment which is pollution free. It assures dignity of individual, which along with other attributes also includes living in a quality environment. Therefore, it is the duty of the State to provide an environment whereby people can live peacefully in a pollution free environment which is the fundamental right of each and every citizen as per the Indian Constitution. This in turn would help the citizen of India to have an endeavour for the attainment of dignity

¹³ *Ibid* at pg. 588.

¹⁴ Ruchi Pant, “From Communities’ Hands to MNCs’ BOOTS: A Case Study from India on Right to Water”, Right and Unity, UK, Available at: http://www.righttowater.info/wp-content/uploads/india_cs.pdf (Last visited on Oct. 5, 2015).

¹⁵ Dr.Sukanta K.Nanda, *Environmental Law* pg. 65 (Central Law Publication, Allahabad, 1st ed., 2007).

¹⁶ AIR 1983 SC 130.

¹⁷ *Ibid* at pg. 139.

of life. Clean, neat, free and unpolluted environment certainly helps in maintaining and attaining dignity¹⁸. The Constitution makes it mandatory to protect, promote the concept of life and personal liberty and to assure every citizen a decent standard of living. It makes a strong commitment towards promoting the well-being of all citizens. The Constitution Forty-Second (Amendment) Act, 1976, by inserting words “Socialistic Secular” in the Preamble has made it amply clear the nature and pattern that the Indian society shall endeavour to accomplish.

The Preamble of the Constitution clearly demonstrates that the socio-economic justice was the foundation of it. Environmental justice however, does not find a place in the body of the Preamble along with other justice. The original resolution to constitute India into a Sovereign, Democratic Republic was modified by the Forty-Second Amendment of 1976 which made India a Sovereign, Socialist Secular, and Democratic Republic¹⁹. The importance of this amendment can easily be visualised. The amendment imposes a number of new obligations on the State. The State has been conferred with the responsibility to eliminate all sorts of social evils which poses environmental risks and causes dangers to the living beings. Therefore, providing social justice to every citizen of the country is the main responsibility on the part of the government. The problem of environmental pollution is social problem affecting the society at large and is increasing in nature. Hence measures are required to be adopted within the Constitutional framework and the same can be achieved with the help of the preamble whenever confusion arises with regard to the interpretation of the provisions of the Constitution relating to environment pollution.

5.2 Fundamental Rights

An overview of Part III of the Constitution of India entitled, “Fundamental Rights” (Articles 12-35)²⁰ makes it clear that there were no explicit provision in favour of environment or pollution control. However, in course of time, Indian Courts have contributed significantly by broadening the contents and contours of some of

¹⁸ N. S. Tiwana, *Environment Pollution and Protection* pg. 258 (Deep & Deep Publication Pvt. Ltd., New Delhi, 4th Edn., 2006).

¹⁹ The Constitution (Forty-Second Amendment) Act, 1976.

²⁰ Such as right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights and rights to constitutional remedies.

these basic rights²¹ because according to the Apex Court these fundamental rights represent the basic values cherished by the people of this country since Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. To examine this perspective from environmental point of view an analysis of Articles 14, 19 and 21 has been made herein below.

5.2.1 Right to Equality

Article 14²² is the principle instrument to strike at the arbitrary action by the State if there is a negation of the right to equality. Such arbitrary action by the State may have an adverse impact on the environment where permissions had granted, for instance, for the construction, in violation of the development regulations or for mining without evaluating the public interest and without application of mind and considering the environmental consequences. Thus, we find that Article 14 can be used as a potent weapon against governmental decisions threatening the environment. The Apex Court, on various occasions, have struck down the arbitrary official sanction in environmental matters on the basis that it was violative of Article 14.

For example, in *State of Himachal Pradesh v. Ganesh Wood Products*²³ 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.

Article 14 has been invoked in *Kinkri Devi and Another v. State of Himachal Pradesh and Ors.*²⁴, which involves indiscriminate grant of mining leases and the unchecked and unscientific exploitation of the mines by the lessees, especially in the hilly tracts and the regions of the Himalaya which in all likelihood, might result in evil consequences having a far reaching and lasting impact on natural wealth, the resources of the country and the local population. It is alleged that the government

²¹ Dr. Surendra Kumar, *Environmental Protection* pg. 64 (Northern Book Center, New Delhi, 1st Edn., 2009).

²² Article 14 of the Constitution of India states that the State shall not deny to any person equality before law and equal protection of the laws within the territory of India.

²³ AIR 1996 SC 149.

²⁴ AIR 1987 HP 4.

arbitrarily granted the permission for mining activities without adequate consideration of environmental impact which amounts to violation of Article 14.

Similarly, in *Mandu Distilleries Pvt. Ltd. v. M.P. Pradushan Niwaran Mandal*²⁵ 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 *Bangalore Medical Trust v. B.S Muddappa*²⁶ 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 contended 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 in the following words:

“Protection of the environment, open spaces for recreation and fresh air, play grounds 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 mandate²⁷”.

²⁵ AIR 1995 MP 57.

²⁶ (1991) 4 SCC 54.

²⁷ *Ibid* at pg. 63.

In *D.D. Vyas v. Ghaziabad Development Authority*²⁸ 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.

Therefore, by applying this Article in environmental issues it can be said that man has the fundamental right to freedom, equality and adequate conditions of life, in environment of a quality that permits a life of dignity and well being²⁹.

5.2.2 Freedom of Speech and Expression and of Trade and Business

The environmental issues that are part of Directive Principles of State Policy may also be enlightened under Article 19(1) (a) that guarantees to every citizen a fundamental freedom of speech and expression. The prerequisite for enjoying such right is knowledge and information and the absence of authentic information on matters of public interest including the environment matters will only gives rise to more confusion. Proper information based on adequate data on environment pollution would help in tackling the problem appropriately under this Article. Most of the environmental jurisprudence in India that has developed by judicial activism was made attracting the attention of the government under the purview of this Article. A public spirited person has the right to inform the judiciary cases concerning environment through letters written or otherwise and the court may by widening the scope of *locus standi* direct the government and the violator to take appropriate steps to stop the same. Such right to inform and to be informed is possible under Article 19(1) (a) which also includes freedom of press because in India the public opinion and media have played an important role in moulding the public perception on environmental issues.

²⁸ AIR 1993 All 57.

²⁹ As stated in Principle I of The Stockholm Declaration, 1972.

Article 19 (1) (a) read with Article 21 of the Constitution guarantees right to decent environment and right to live peacefully. In *P. A. Jacob v. The Superintendent of Police, Kottayam*,³⁰ 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 loud speakers can be controlled under article 19 (1)(a) of the constitution.

Apart from the right to speech and expression Article 19 (1) (g)³¹ is also important from the environment point of view. The pollution is mainly from trade and industries. For example, tanneries, acid factories, dye factories, distilleries, hotel industries are contributing to environmental pollution. There is a growing problem of balancing the right to development and right to clean and healthy environment. Article 19 (1) (g) of the Indian Constitution guaranteed freedom of trade and commerce but at the same time it states that this right is subject to reasonable restrictions³². Some of the trades or businesses are carried on in manners which endanger vegetation cover, animals, aquatic life and human health. Any business or trade which is offensive to flora and fauna or human beings cannot be permitted to be carried on in the name of fundamental right.

A citizen cannot carry on business activity, if it is health hazards to the society or general public. Thus safeguards for environment protection are inherent in this. The Supreme Court, while deciding the matter relating to carrying on trade of liquor in *Cooverjee B. Bharucha v. Excise commissioner, Ajmer*³³ observed that, if there is clash between environmental protection and right to freedom of trade and occupation, the courts have to balance environmental interests with the fundamental rights to carry on any occupations.

In *Burrabazar Fire Works Dealers Association and Ors. v. The Commissioner of Police and Ors*³⁴ the Calcutta High Court held that Article 19(1) (g) of the Constitution of India does not guarantee the fundamental right to carry on trade or

³⁰ AIR 1993 Ker 1.

³¹ Article 19 (1)(g) of the Constitution of India guarantees to every citizens of India the right to practice any profession, or to carry out on any occupation, trade or business. This right is, however, subject to reasonable restrictions.

³² Article 19 (6) of the Constitution of India.

³³ AIR 1954 SC 220.

³⁴ AIR1998 Cal 21.

business which creates pollution or which takes away that communities safety, health and peace. The Court is 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 limit and which will generate pollution which would endanger the health and the public order. A citizen or people cannot be made a captive listener to hear the tremendous sounds caused by bursting out from noisy fireworks. It may give pleasure to one or two persons who burst it but others have to be a captive listener whose fundamental rights guaranteed under Article 19(1)(a) and other provisions of the Constitution are taken away, suspended and made meaningless.

In *Abhilash Textiles v. Rajkot Municipal Corporation*³⁵ the Gujarat High Court dealt while delivering judgement on the question whether discharging dirty water from the factory on the public road and public drainage without purifying the same causing damage to public health can be allowed on the ground that Article 19(1)(g) of the Constitution which confers right upon every citizen to carry on any trade or business held that the right is subject to reasonable restrictions which may be imposed in the interest of the general public. Therefore, no one has a right to carry on a business so as to cause nuisance to the society. Similarly, the business cannot be carried in the manner by which the business activity would become a health hazard to the entire society. The court held that the petitioners cannot be permitted to reap profits at the cost of the public health as they had no right to carry on their businesses without complying with the requirement of the law.

5.2.3 Right to life and Personal Liberty

Preservation of human life is a paramount importance. The word ‘life’ in Article 21³⁶ is a key to the judiciary to interpret and is also a key to an individual to protect environment under the guise of this word. This right has been held to be the heart of the Constitution, the most organic and progressive provision in our living constitution, the foundation of our laws. Accordingly, environmental pollution which spoils the atmosphere and thereby affects the life and health of the person has been regarded as amounting to violation of Article 21. The Court in various cases while

³⁵AIR 1988 Guj 57.

³⁶Article 21 of the Constitution of India states-“No person shall be deprived of his life and personal liberty except according to procedure established by law”.

expanding the horizon of the scope the Article 21 included the environmental issues also. In fact, the judicial activism in protecting and safeguarding the natural environment follows from the international commitments made by India in Stockholm Conference of 1972 to the Rio earth summit of 1992, and thereafter, the concept of sustainable development which is a reflection of such commitment has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the caring capacity of the supporting eco-system. It balances development with ecology, and ensures intergeneration equity³⁷. The Directive Principles of State Policy and the Fundamental Duties Chapters which explicitly enunciate the national commitment to protect and improve the environment³⁸ has found its platform under Article 21 in the hand of our judiciary.

The Supreme Court while interpreting Article 21 in Part III of the Constitution of India observed in various cases that right to life includes within its purview, a catena of rights viz. right to live with human dignity and a life which is to be lived in a proper environment, free of danger of disease and infection, to live in hygienic conditions and so on³⁹. No justification is needed here because no one can lead a healthy life without a healthy and hygienic environment. Not only this, it has been asserted that right to live in healthy environment is the ‘sanctum sanctorum’ of human rights also⁴⁰. Right to life is natural life, logically links the setting of human rights to nature. Consequently, instead of the conventional human-to-human approach human-to-nature conception becomes a dynamic instrument of sustainable development with justice. The concept of right to life, which was in a way, judicially neglected till 1981, and which was suddenly come to occupy the position of “brooding omnipresence” in the scheme of fundamental rights, has been infused with the dynamic concept of human dignity which is the foundation of all other human rights including the right to decent environment⁴¹.

³⁷ P. Ishwara Bhat, *Fundamental Rights: A Study of their Interrelationship* pg. 298 (Eastern Law House, New Delhi, 1st Edn., 2004).

³⁸ Aruna Venkat, *Environmental Law and Policy* pgs. 50-51 (PHI Learning Pvt. Ltd., New Delhi, 1st Edn., 2011).

³⁹ P. S. Jaswal, *Environmental law* pg. 48 (Pioneer Publication, Faridabad, 2nd Edn., 2003).

⁴⁰ Manmohan Singh Gill and Jasleen Kewlani, *Environmental Conscience: Socio-Legal and Judicial Paradigm* pg. 218 (Concept Publishing Company, New Delhi, 1st Edn., 2009).

⁴¹ Aruna Venkat, *Environmental Law and Policy* pg. 55 (PHI Learning Pvt. Ltd., New Delhi, 1st Edn., 2011).

In fact, this right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly Clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and opportunities and facilities for children to develop in a healthy manner, just and humane conditions of work etc. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State neither the Central Government nor any State Government has the right to take any action which will deprive a person of the enjoyment of these basic essentials.

In this connection the observation made by Justice Jagannatha Rao in *A.P. Pollution Control Board v. Prof. M. V. Nayudu*⁴² deserve special mention when he says that the environmental concerns were as important as the human rights concerns as both were founded on Article 21 which guaranteed the fundamental right to life and personal liberty. According to his Lordship, “While environmental aspects concern ‘Life’, human rights aspects concern ‘Liberty’”. His Lordship further declared that, in the context of the emerging environmental jurisprudence, it was the duty of the Court to render justice by taking all aspects into considerations. The court held that “healthy environment” and “sustainable development” were fundamental rights implicit in the right to life. The Court also held that “in today’s emerging jurisprudence, environmental right, which encompasses a group of collective rights, is described as ‘third generation rights’⁴³”.

The right to life guaranteed in Article 21 embraces the protection and preservation of nature’s gift. In tune with this trend, Justice Bhagwati while elucidating the importance of this right observed in *Francis Coralie v. Union Territory of Delhi*⁴⁴:

“The right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something more than just physical survival. The right to life includes the right to live with human dignity and all that goes with it, namely, the bare necessities of life such as adequate nutrition, clothing and

⁴² AIR 1999 SC 812.

⁴³ *Ibid* at pg. 825.

⁴⁴ AIR 1981 SC 746.

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 life⁴⁵”.

*In Re Noise Pollution-Implementation of Laws for Restricting Use of Loudspeakers and High Volume Producing Sound Systems with Forum, Prevention of Environment and Sound Pollution v. Union of India*⁴⁶, Chief Justice R. C. Lahoti, speaking for the Court in the context of a Writ petition seeking strict implementation of laws pertaining to anti-noise and sound pollution observed:

“It (Article 21) guarantees a right to every person to live with human dignity. Therein are included, all the aspects of life which go to make a person’s life meaningful, complete and worth-living. The human life has its charm and there is no reason why the life should not be enjoyed along with all permissible pleasure. Anyone who wishes to live with peace, comfort and quiet within his house has a right to prevent the noise as pollutant reaching him. No one can claim a right to create noise even in his own premises which would travel beyond his precincts and cause nuisance to neighbours and others.....If any one increases his volume of speech and that too with the assistance of artificial devices so as to compulsorily expose unwilling persons to hear a noise raised to unpleasant and obnoxious levels, then the person speaking is violating the right of other to a peaceful, comfortable and pollution free, life guaranteed by Article 21⁴⁷”.

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 had ushered in the post *Maneka*⁴⁸ period where the concept of right to life had witnessed new developments and new dimensions in interpreting the fundamental rights embodied in Article 21. Prior to this all the fundamental rights guaranteed in Part III of the Constitution were

⁴⁵ *Ibid* at pg. 753.

⁴⁶(2005) 5 SCC 733.

⁴⁷ *Ibid* at pg. 745.

⁴⁸ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

considered to negative in nature and imposing only negative obligation on the State⁴⁹. For the first time the Supreme Court in the *Maneka Gandhi v. Union of India*⁵⁰ transformed these rights into positive rights and imposed an affirmative duty on the State to enforce it.

On the basis of the wider interpretation to the right to life in Article 21 of the Constitution of India, there has been catena of cases where the Supreme Court and High Courts in the country have held that the right to pollution-free environment is part of the right to life. The first case where the Supreme Court recognised the right to clean environment, as an aspect of the right to life is *Rural Litigation and Entitlement Kendra v. State of U.P.*⁵¹ In this case, the relevant issue for the purpose of our discussion was whether limestone-mining activities in the Mussoorie-Dehradun region caused ecological disturbance and, thus, violated the right to life of the people in that region. The Supreme Court declared that these activities polluted the environment and, thus, violated the right to life of the people. While ordering the closure of some of the limestone quarries, the Supreme Court implicitly read the right to clean environment in the right to life. Without referring to Article 21 of the Constitution, the Apex Court observed:

“This would undoubtedly cause hardship to them, but it is a price that has to be paid for protecting and safeguarding the right of the people to live in healthy environment with minimal disturbance of ecological balance and without avoidable hazard to them and to their cattle, homes and agricultural land and undue affection of air, water and environment⁵²”.

Similarly, in *Charan Lal Sahu v. Union of India*⁵³, in his concurring opinion Justice K.N. Singh observed:

“In the context of our national dimensions of human rights, right to life, liberty, pollution free air and water is guaranteed by Constitution under

⁴⁹ R.P. Anand, R. Khan, *et.al.*, *Law, Science and Environment* pg. 189 (Lancers Books, New Delhi, 1st Edn.,1987).

⁵⁰ AIR 1978 SC 597.

⁵¹ AIR 1985 SC 652.

⁵² *Ibid* at pg. 656.

⁵³ AIR 1990 SC 1480.

Articles 21, 48A and 51A(g), it is the duty of the State to take effective steps to protect the guaranteed constitutional rights⁵⁴”.

Again, in *Subhash Kumar v. State of Bihar*⁵⁵ Justice K. N. Singh declared:

“Right to live is a fundamental right under Article 21 of the Constitution and it includes the right to 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 life⁵⁶”.

In *Virender Gaur v. State of Haryana*⁵⁷, the Court reiterating the view enunciated in the *Subhash Kumar* case stated,

“Article 21 protects Right to Life as a fundamental right. Enjoyment of the life and its attainment including the right to life 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 life cannot be enjoyed. Any contra acts or actions would cause environmental pollution. Environmental, ecological, air, water pollution, etc. should be regarded as amounting to violation of Article 21. Therefore, hygienic environment is an integral part of right of healthy life and it would be impossible to live with human dignity without a human and healthy environment.....Therefore, there is a constitutional imperative on the State Government.....not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve both man-made and the natural environment⁵⁸”.

⁵⁴ *Ibid* at pg. 1551.

⁵⁵ AIR 1991 SC 420.

⁵⁶ *Ibid* at pg. 420.

⁵⁷ (1995) 2 SCC 577.

⁵⁸ *Ibid* at pg. 578.

A clarion call was given by the Andhra Pradesh High Court when in monumental judgment of *T. Damodhar Rao v. The Special Officer Municipal Corporation, Hyderabad*⁵⁹, it is observed:

“It would be reasonable to hold that the enjoyment of life and its attainment and fulfillment guaranteed by Article 21 of the Constitution embraces the protection and preservation of nature's 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 Constitution⁶⁰”.

In *F.K. Hussain v. Union of India*⁶¹, the Kerala High Court pointed out that the right to sweet water and the right to free air are attributes of the right of life, for, those are the basic elements which sustain the life itself.

In *Rajiv Ranjan Singh v. State of Bihar*⁶², it was held by the Patna High Court 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 Arts. 14, 21 read with Articles 47 and 48-A of the Constitution of India. The Court further directed in this case that in case it comes to light that any person has contracted any ailment the cause of which can be directly related to the effluent discharged by the distillery, the company shall have to bear all expenses of his treatment and the question of awarding suitable compensation to the victim may also be considered.

Yet in another case⁶³, it was 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

⁵⁹ AIR 1987 AP 171.

⁶⁰ *Ibid* at pg. 172.

⁶¹ AIR 1990 Ker 321.

⁶² AIR 1992 Pat 86.

⁶³ *K.C. Malhotra v. State*, AIR 1994 MP 48.

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 addition to the above right, the judiciary in tune of Directive Principle of State Policy and showing concern to the public health and safety, held in various cases that right to health is also a fundamental right while under Article 21 and such right grew as an offshoot of environmental litigation initiated by environmental activists regarding the environment issues. Undoubtedly the right to environment was crucial because a polluted environment affects public health. A pollution free environment as a fundamental right presupposes right to health as a fundamental right. Logically, the explicit recognition of the fundamental right to health should have preceded the fundamental right to good environment. However, the development of jurisprudence in this branch has been the reverse. The right to unpolluted environment was recognised as a right in the first instance and from that followed the right to public health, health and health care.

In *Vincent Panikurlangara v. Union of India & Ors.*⁶⁴ it was held that in a welfare State, it is the obligation of the State to ensure the creation and maintaining of conditions congenial to good health. The right to live in peace, to sleep in peace and the right to repose and health are part of the right to live. We recognise every man's home to be his castle, which cannot be invaded by toxic fumes, or tormenting sounds.

The Supreme Court relied on the international instruments in *CESC Ltd. v. Subhash Chandra Bose*⁶⁵ observed that

“Health is a state of complete physical, mental and social well being and not merely the absence of disease or infirmity. In the light of Articles 22 to 25 of the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights and in the light of socio-economic justice assured in our Constitution, right to health is a fundamental human right to workmen. The maintenance of health is a most imperative

⁶⁴ AIR 1987 SC 990.

⁶⁵ AIR 1992 SC 573.

constitutional goal whose realisation requires interaction by many social and economic factors⁶⁶.”

In *Consumer Education and Research Centre v. Union of India*⁶⁷ the Supreme Court for the first time explicitly held that ‘the right to health is an integral fact of a meaningful right to life.’ This case was concerning the occupational health hazards faced by workers in the asbestos industry. Reading Article 21 with the relevant directive principles guaranteed in articles 39 (e), 41 and 43, the Supreme Court held that the right to health and medical care is a fundamental right and it makes the life of the workman meaningful and purposeful with the dignity of person.

In the context of environment pollution it can be said that such pollution on the environment has a direction impact on public health. The relation between the two was very well understood by the Supreme Court in its various judicial pronouncements. One of the most important rulings of the Supreme Court where the effect of environment pollution on health was discussed and the state authorities were made responsible for that was *Municipal Council Ratlam v. Vardichand and Ors.*⁶⁸ This is a crucial and one of the important cases on environmental issues because for the first time the Supreme Court prescribed that in matters concerning public health financial inability was no ground for State authorities not to carry out their duties. The apex court held that a responsible Municipal Council constituted for the precise purpose of preserving public health and providing better finances cannot run away from its principal duty by pleading financial inability. Decency and dignity are nonnegotiable facets of human rights and are a first charge on local self-governing bodies. Similarly, providing drainage system – not pompous and attractive, but in working condition and sufficient to meet the needs of the people – cannot be evaded if the municipality is to justify its existence.

In *T. Ramakrishna Rao v. Hyderabad Development Authority*⁶⁹, the Andhra Pradesh High Court observed: Protection of the environment is not only the duty of the citizens but also the obligation of the State and it’s all other organs including the Courts. The enjoyment of life and its attainment and fulfilment guaranteed by Article

⁶⁶ *Ibid* at pg. 585.

⁶⁷ AIR 1995 SC 922.

⁶⁸ AIR 1980 SC 1622.

⁶⁹ 2002 (2) ALT 193.

21 of the Constitution embraces the protection and preservation of nature's gift without which life cannot be enjoyed fruitfully. The slow poisoning of the atmosphere caused by the environmental pollution and spoliation should be regarded as amounting to violation of Article 21 of the Constitution of India.

In *Virender Gaur v. State of Haryana*⁷⁰, the Supreme Court held that environmental, ecological, air and water pollution, etc., should be regarded as amounting to violation of right to health guaranteed by Article 21 of the Constitution. It is right to state that hygienic environment is an integral facet of the right to healthy life and it would not be possible to live with human dignity without a humane and healthy environment.

5.3 The Directive Principles of State Policy (DPSP)

Another feature of the Constitution of India is the Directive Principles of State Policy⁷¹, which embody the responsibility of the State towards its citizens. Although the Directive Principles are fundamental in the governance of the country they are not legally enforceable. Rather, they impose constitutional duties on the State to apply the principles and are the guidelines and goals for attaining political justice, liberty and equality as enunciated in the Preamble of the Indian Constitution. Some of them specifically deal with the various facets of human health and environment. In some cases these Directive Principles become complementary to the fundamental rights and are enforced by courts of law. All these articles are not directly related to environmental protection except Article 48-A of the Constitution of India which has been introduced by the Forty-Second Amendment Act to the Indian constitution in the year 1976.

The Parliament had considerable debate over the wording of the draft Article 48-A. Several amendments were moved in both the houses of the Parliament. In this connection H.M. Seervai has correctly pointed out:

“Article 48-A reflects an increasing awareness of people all over the word of the need to preserve the environment from pollution, especially in urban areas. Smoke, industrial waste, deleterious exhaust fumes from motor cars and other

⁷⁰ 1995 (2) SCC 577.

⁷¹ Part IV of the Constitution of India, Articles 36-51.

combustion engines are injurious to the health and well-being of the people and foul the atmosphere. The preservation of forests and their renewal by afforestation has long been recognised in India as of great importance both with reference to rainfall and to prevent erosion of the soil by depriving it of forests which protect it. The preservation of wild life is looked upon as necessary for the 'preservation of ecological balance'. Article 48-A of the Constitution of India has rightly emphasise on the fact that the State should try not only to protect but also to improve the environment⁷².

Article 39⁷³ of the Constitution of India envisages the distribution and management of material resources which includes natural and man-made resources in such a manner that their concentration and monopoly over their use should not give rise to ecological imbalances and health hazards.

The expression 'material resources' in Article 39(b) means all things which are capable of producing wealth for the community. Everything of value or use in the material world is material resource and the individual being a member of the community, his resources are part of those of the community. It is wide enough to cover not only natural or physical resources, but also movable or immovable property, such as, land, buildings, workshops, vehicles, etc.⁷⁴. It includes those, which are already vested in the State but also in the hands of private individuals. Further, the expression 'distribution' in Article 39(b) does not mean that one's property is taken over and is distributed to others. It also includes nationalisation which is an effective means to prevent concentration of wealth in a few hands so as to benefit the society at large⁷⁵.

⁷² H.M. Seervai, *Constitutional Law of India: A Critical Commentary* pg. 2019 (Universal Law Publishing Co., New Delhi, Reprint 2010).

⁷³ Article 39 of the Constitution of India says: "The State shall, in particular, direct its policy towards securing -(a) that the citizens, men and women equally, have the right to an adequate means of livelihood; (b) that the ownership and control of material resources of the community are so distributed as best to subserve the common good; (c) that the operation of the economic system does not result in concentration of wealth and means of production to the common detriment; (d) that there is equal pay for equal work for both men and women; (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that children are not forced by economic necessity to enter avocations unsuited to their age and strength; (e) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that children and youth are protected against exploitation and against moral and material abandonment".

⁷⁴ Prof. Narendra Kumar, *Constitutional Law of India* pg. 485 (Allahabad Law Agency, New Delhi, 8th Edn., Reprint 2012).

⁷⁵ *Ibid* at pgs. 485-486.

As mentioned earlier that at the time of framing of Indian Constitution, it did not contain any specific provision dealing directly with environment. Only provision which was of some significance was Article 47 of the Directive Principles of State Policy. Under this article the State is duty bound to improve the public health. This Constitutional duty can be fulfilled only in an atmosphere of clean environment. Therefore, the improvement of standard of living can be possible only by way of raising the level of public health in a pollution free environment without which public health cannot be assured. In *Vincent v. Union of India*⁷⁶, the Court while dealing with the legal obligation of the State to prohibit the sale and use of banned drugs, accepted the right to health as a fundamental right in the following words:

“A healthy body is the very foundation for all human activities. That is why the adage ‘Sariramadyam Khalu Dharam Sadhnam’. In a welfare State, therefore, it is the obligation of the state to ensure the creation and the sustaining of conditions congenial to good health⁷⁷”.

Article 48-A is a basic index to the state to protect and improve the environment and Article 51-A (g) grant basic duty on the citizens of India to protect and improve the environment and have compassion for living creatures. The cumulative effect of Articles 48-A and 51-A (g)⁷⁸ is that both the ‘State’ as well as the ‘citizens’ is now under constitutional obligation to conserve, perceive, protect and improve the environment. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way⁷⁹. This clearly shows that the Indian Parliament fell in line with old tradition values and conferred on the citizens of India to protect the natural environment including forests, lakes, rivers and compassion for living creatures. The language used in the article clearly indicated the principle of equity, co-existence, reverence of

⁷⁶ AIR 1987 SC 990.

⁷⁷ *Ibid* at pg. 994.

⁷⁸ Article 51-A(g) of the Constitution of India states 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.

⁷⁹ Armin Rosencranz, Shyam Divan, *et. al.*, *Environmental Law and Policy in India* pg. 25 (Oxford University Press, 1991).

nature and non-violence has been given a legal recognition⁸⁰. These Articles have to be considered in the light of Article 21 which secures right to life and personal liberty.

After focusing on the import and importance of these Articles Justice A. R. Lakshmanan, in *Intellectuals Forum, Tirupathi v. state of Andhra Pradesh*⁸¹ observed:

“These two Articles are not only fundamental in the governance of the country but also it shall be the duty of the State to apply these Principles in making laws and further, these two articles are to be kept in mind in understanding the scope and purport of fundamental rights guaranteed by the Constitution including Articles 14, 19 and 21 and also the various laws enacted by the Parliament and the State Legislature⁸²”.

The use of the terms ‘protect and improve’ implies the necessity of the various components of environment for human life and that improvement for human life and that improvement of the natural environment means improvement of the quality of life. Further, protection of the environment implicitly directs us not to cut the trees, keep the water of rivers and lakes, etc. clean and wholesome⁸³.

The Apex Court in *M. C. Mehta v. Union of India*⁸⁴ relied on Article 48A and gave directions to the Central and State Governments and other local bodies and boards, to take appropriate steps for the prevention and control of pollution of water. Expressing their concern for the preservation of the fragile ecology of the forest area and protection of the Tiger Reserve as well as the right of the tribals to keep body and soul together, the Supreme Court in *Animal and Environment Legal Defence Fund v. Union of India*⁸⁵, issued directions to the Government of Madhya Pradesh for properly implementing the licence and for monitoring the fishing activity of all the permit holders, within the Pench National Park area in the State.

⁸⁰ R. B. Singh and Suresh Misra, *Environmental Law in India: issues and Responses* pg. 102 (Concept Publishing Company, 1st Edn., 1996).

⁸¹ (2006) 3 SCC 549.

⁸² *Ibid* at pg. 552.

⁸³ R. B. Singh and Suresh Misra, *Environmental Law in India: issues and Responses* pg. 105 (Concept Publishing Company, 1st Edn., 1996).

⁸⁴ AIR 1987 SC 1086.

⁸⁵ AIR 1997 SC 1071.

5.4 Fundamental Duties

Article 51A(g) specifically deals with the fundamental duty with respect to environment. It provides 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. To put it simply this Article refers to the fundamental duty of every citizen to protect and improve 'natural environment'. The provision of fundamental duty flows from the World Charter for Nature adopted by the United Nations General Assembly on 28 October 1982. The Charter recognizes the right of the individual and non-governmental entities by providing that all persons shall have access to means of redress when their environment has suffered damage or degradation⁸⁶. The Charter also imposes a corresponding duty upon persons too ensure that objectives and requirements of Charter are fulfilled⁸⁷. Indian Constitution has imposed a joint responsibility upon the State; and every citizen of India to protect and improve the natural environment. In the words of Ranganath Mishra, J.:

“Preservation of environment and keeping the ecological balance unaffected is a task which not only Government but also every citizen must undertake. It is a social obligation and let it remind every citizen that it is his fundamental duty as enshrined in Article 51-A (g) of the Constitution”⁸⁸.

The term ‘to have compassion of living creatures’ used in Article 51A(g) impliedly recognizes the principle that all creates are made equal and that animal killing should be prohibited as taught by the principle of non-violence or as the moral code of conduct says ‘killing of animals and birds is a sin of highest orders’. The scope of Article 51A(g) was examined by the High Court of Rajasthan in *L.K. Koolwal v State of Rajasthan*⁸⁹. Under the Rajasthan Municipalities Act, 1959 Clauses © and (d) of Section 98, the Municipal Authority is charged with the primary duty “to clean public streets, sewers and all spaces and places, not being private property, which are open to the enjoyment of public, removing of noxious vegetation and all public nuisances and to remove filth, rubbish, nigh soil, odour or any other noxious or offensive matter”. The petitioner L. K. Koolwal moved a writ petition

⁸⁶ Article 23, World Charter for Nature.

⁸⁷ Article 24, World Charter for Nature.

⁸⁸ *Rural Litigation and Entitlement Kendra v. State of UP*, AIR 1987 SC 359, at p. 364.

⁸⁹ AIR 1988 Raj 2.

under Article 226 of the Constitution before the Rajasthan high Court showing that the municipality has failed to discharge its “primary duty” resulting in the acute sanitation problem in the city of Jaipur which is hazardous to the life of the citizens of Jaipur. The High Court while pronouncing the judgment explained the true scope of Article 51A in the following term:

“We can call Article 51A ordinarily as the duty of the citizens. But in fact it is the right of the citizens as it creates the right in favour of 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 51A gives a right to the citizens to move the Court for the enforcement of the duty cast on State instrumentalities, agencies, departments, local bodies and statutory authorities created under the peculiar law of the State⁹⁰”.

Thus, Article 51A has come as a boon so far as environmental protection is concerned. But its benefit can be availed of only if people are alive to their duties regarding protection of environment⁹¹. In *Taj Trapezium case*⁹², the Supreme Court has interpreted Articles 48A and 51A(g) as constitutional mandate to protect and improve the environment. Commenting on the legal value of these Articles, Karnataka High Court in *Obayya Pujari v Member Secretary, KSPCB, Bangalore*⁹³, observed:

“When the court is called upon to give effect to the directive principle and the fundamental duty, the court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy making authority. The least that the Court may do is to examine whether appropriate considerations are borne in mind and irrelevancies excluded. In appropriate cases, the court may go further, but how much further depends upon the circumstances of the case. The court may always give the necessary directions⁹⁴”.

⁹⁰ *Ibid* at pg. 4.

⁹¹ H. N. Tiwari, *Environmental Law* pg.83 (Allahabad Law Agency, Faridabad, Reprint 2012).

⁹² *M.C. Mehta v. Union of India* AIR 1997 SC 734.

⁹³ AIR 1999 Kant 157.

⁹⁴ *Ibid* at pg. 163.

In *Rural Litigation and Entitlement Kendra v State of UP*⁹⁵, the Apex Court observed:

“The consequences of interference with ecology and environment have now come to be realized. It is necessary that the Himalayas and the forest growth on the mountain range should be left uninterfered with so that there may be sufficient quantity of rain. The top soil may be preserved without being eroded and the natural setting of the area may remain intact. Of course, natural resources have got to be tapped for the purposes of social development but one cannot forget at the same time that tapping of resources has to be done with requisite attention and care so that ecology and environment may not be affected in any serious way. There may not be any depletion of water resources and long-term planning must be undertaken to keep up the national wealth. It has always to be remembered that these are permanent assets of the mankind are not intended to be exhausted in one generation. Preservation of the environment and keeping ecological balance unaffected is a task which not only the Governments but also every citizen must undertake. It is a social obligation and let every Indian citizen be reminded that it is his fundamental duty as enshrined in Article 51A (g) of the Constitution⁹⁶”.

The Supreme Court gave effect to the social obligation to protect the environment and reminded every Indian citizen of his fundamental duty as enshrined in Article 51A (g) to protect the environment. In *Sitaram Chhaparia v State of Bihar*⁹⁷, Patna High Court held that protection of the environment is a fundamental duty. The petition was filed as public interest litigation alleging that an industrial unit consisting of a tyre retreading plant set up in the residential area was emitting carbon dioxide gas and other obnoxious gases from its furnaces causing harm to the environment of the locality. The Court regretted that the State Government of Bihar and the Bihar State Pollution Control Board paid lip service to their obligations under the law to monitor and prevent environmental pollution especially under the Constitution of India and the Environment (Protection) Act 1986 which require strict vigil on matters of environment and ecology. The Court termed such impervious

⁹⁵ AIR 1985 SC 652..

⁹⁶ *Ibid* at pg. 658.

⁹⁷ AIR 2002 Pat 134.

approach and attitude by state functionaries as ‘anti-nature’. The High Court of Patna finally held that protecting the environment is a fundamental duty under Article 51A of the Constitution of India.

5.5 Legislative Relations

The legislative relations between the Union and the States are governed by Part XI of the Constitution of India. Article 246⁹⁸ of the Constitution makes division of the legislative areas between the Union and the States with reference to the three lists in the Seventh Schedule to the Constitution. The Indian Constitution provides for a federal structure within the framework of parliamentary form of government. Article 246 divides the subject areas for legislation into three lists, viz., Union List, State List and Concurrent List⁹⁹. A perusal of the various subjects enumerated in the three lists will reveal that there is no entry providing for ‘Environmental Protection’ either in List I, List II or in List III. The omission of specific legislative entry on environmental protection from the Central List and the Concurrent List has created the problem of legislative competency for Parliament whenever it wanted to enact an environmentally related legislation. Moreover, the distribution of subjects also gave rise to certain problems. Pertaining to legislative competency, most of the legislative entries, which relate to environmental protection such as public health and sanitation, agriculture, water supplies, irrigation and fisheries etc. are included in the State List. This Constitutional scheme of distribution of legislative power prevents Parliament from legislating on these subjects in ordinary circumstances, though it is often felt that central legislation is more desirable in these areas¹⁰⁰.

⁹⁸ Article 246 of the Constitution of India states: Subject-matter of laws made by Parliament and by the Legislatures of States-(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matter enumerated in List I in the Seventh Schedule (in this Constitution referred to as the ‘Union List’).

(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’)

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the ‘State List’)

(4) Parliament has power to make laws with respect to any of 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.

⁹⁹ Gurdeep Singh, *Environmental Law in India* pg. 56 (Macmillan Publishers India Ltd., Delhi, Reprint, 2011).

¹⁰⁰ Aruna Venkat, *Environmental Law and Policy* pg. 52 (PHI Learning Pvt. Ltd., New Delhi, 1st Edn., 2011).

To overcome this difficulty, Parliament had to take recourse, using its power under Article 249¹⁰¹ or Articles 252¹⁰². Under Article 249, Parliament is empowered to legislate in the “national interest” on matters enumerated in the State list. Similarly, under Article 252, Parliament may enact laws on State subjects, for those States, whose legislatures have consented to central legislation. Thus, the Water (Prevention and Control of Pollution) Act of 1974 was enacted by Parliament pursuant to consent resolutions passed by 12 State legislatures. In this context, Articles 253¹⁰³ of the Constitution assumes a lot of importance from an environmentalist’s point of view. Article 253 empowers Parliament to make laws implementing India’s international obligations as well as any decision reached at an International Conference, association or other body. In view of the broad range of issues addressed by international conventions, conferences, treaties and agreements, Article 253 apparently gives Parliament the power to enact laws on virtually any entry contained in the State List. Parliament has used this power to enact the Air (Prevention and Control of Pollution) Act of 1981 and the Environment (Protection) Act of 1986. The preambles to both

¹⁰¹ Article 249 of the Constitution states: 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 a 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.

¹⁰²Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State-(1) If it appears to the Legislature of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in Articles 249 and 250 should be regulated in such States by Parliament by law, and if resolutions to that effect are passed by all the Houses of the Legislatures of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State. (2) Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State.

¹⁰³ Legislation for giving effect to international agreements- Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

laws states that these Acts were enacted to implement the decisions reached at the United Nations Conference on the Human Environment held at Stockholm in 1972¹⁰⁴.

Firstly, environmental protection and improvement was explicitly made a Directive Principle of State Policy incorporating Article 48-A¹⁰⁵ to the Constitution. Secondly, Article 51-A (g)¹⁰⁶, in a new chapter entitled “Fundamental Duties”. Thirdly, the Amendment introduced a new entry to the Concurrent List, “Population Control and Family Planning”¹⁰⁷, while “Forests”¹⁰⁸ and “Protection of Wild Animals and Birds”¹⁰⁹ were transferred from the State List to the Concurrent List.

There are certain subjects with respect to which Parliament has exclusive power to make laws such as major industries¹¹⁰, major ports¹¹¹, oilfields and mineral oil resources petroleum and petroleum products, dangerously inflammable liquids and substances¹¹², mines and mineral development¹¹³, inter-state rivers and river valleys¹¹⁴, fishing and fisheries beyond territorial waters¹¹⁵, ancient and historical monuments and national importance¹¹⁶, inter-state migration¹¹⁷, maritime shipping and navigation¹¹⁸, national highways¹¹⁹, explosives¹²⁰, atomic energy¹²¹, railways¹²² and airways¹²³.

¹⁰⁴ Aruna Venkat, *Environmental Law and Policy* pg. 80 (PHI Learning Pvt. Ltd., New Delhi, 1st Edn., 2011).

¹⁰⁵ The Article states-“The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country”.

¹⁰⁶ It states-“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”.

¹⁰⁷ Entry 20-A, List III, Seventh Schedule of the Constitution of India.

¹⁰⁸ Entry 17-B, List III, Seventh Schedule of the Constitution of India.

¹⁰⁹ Entry 17-A, List III, Seventh Schedule of the Constitution of India.

¹¹⁰ Entries 7 and 52, List I, Seventh Schedule of the Constitution of India.

¹¹¹ Entry 27, List I, Seventh Schedule of the Constitution of India.

¹¹² Entry 53, List I, Seventh Schedule of the Constitution of India.

¹¹³ Entry 54, List I, Seventh Schedule of the Constitution of India.

¹¹⁴ Entry 56, List I, Seventh Schedule of the Constitution of India.

¹¹⁵ Entry 57, List I, Seventh Schedule of the Constitution of India.

¹¹⁶ Entry 67, List I, Seventh Schedule of the Constitution of India.

¹¹⁷ Entry 81, List I, Seventh Schedule of the Constitution of India.

¹¹⁸ Entry 25, List I, Seventh Schedule of the Constitution of India.

¹¹⁹ Entry 23 List I, Seventh Schedule of the Constitution of India.

¹²⁰ Entry 5 List I, Seventh Schedule of the Constitution of India.

¹²¹ Entry 6 List I, Seventh Schedule of the Constitution of India.

¹²² Entry 23 List I, Seventh Schedule of the Constitution of India.

¹²³ Entry 2 List I, Seventh Schedule of the Constitution of India.

The matters in respect of which both Parliament and legislature of any State have power to make laws include prevention of cruelty to animals¹²⁴, forests¹²⁵, protection of wild animals and birds¹²⁶, population control and family planning¹²⁷, minor ports¹²⁸, factories¹²⁹, mechanically propelled vehicles¹³⁰ and economic and social planning¹³¹. The exclusive State subjects, among other things, are public health and sanitation¹³², agriculture¹³³, preservation of stock¹³⁴, water¹³⁵, land¹³⁶, fisheries¹³⁷, gas and gas works¹³⁸, local government¹³⁹, industries, the control of which has not been taken over by the Union¹⁴⁰, and regulation of mines and mineral development subject to the provisions of the Union List with respect to regulation and development under the control of the Union¹⁴¹.

In 1980, the Tiwari Committee recommended that a new entry on “Environmental Protection” be included in the Concurrent List to enable the Central Government to legislate on environmental subjects. It may be noted, in this context, that as early as in 1979, a scholastic view in support of the inclusion of “Environmental Protection” as a separate concurrent legislative subject was already expressed. It is unfortunate that this valuable suggestion has not been acted upon as yet to enable both Parliament and State legislature to legislate on all aspects of environment without any constitutional hindrance¹⁴².

¹²⁴ Entry 17, List III, Seventh Schedule of the Constitution of India.

¹²⁵ Entry 17-A (Originally, the subject of ‘Forest’ was included in List II, entry 19. It was transferred to List III by 42nd Amendment of the Constitution, as the States did not follow a uniform policy for protection of forests.)

¹²⁶ Entry 17-B. Originally, the subject of ‘Protection of Wild Animals and Birds’ was contained in List II, Entry 20.

¹²⁷ Entry 20-A. (This is a new subject added by 42nd Amendment.)

¹²⁸ Entry 31 List I, Seventh Schedule of the Constitution of India.

¹²⁹ Entry 36 List I, Seventh Schedule of the Constitution of India.

¹³⁰ Entry 32 List I, Seventh Schedule of the Constitution of India.

¹³¹ Entry 20 List I, Seventh Schedule of the Constitution of India.

¹³² Entry 6, List II, Seventh Schedule of the Constitution of India.

¹³³ Entry 14 List II, Seventh Schedule of the Constitution of India.

¹³⁴ Entry 15 List II, Seventh Schedule of the Constitution of India.

¹³⁵ Entry 17 List II, Seventh Schedule of the Constitution of India.

¹³⁶ Entry 17 List II, Seventh Schedule of the Constitution of India.

¹³⁷ Entry 21 List II, Seventh Schedule of the Constitution of India.

¹³⁸ Entry 25 List II, Seventh Schedule of the Constitution of India.

¹³⁹ Entry 5 List II, Seventh Schedule of the Constitution of India.

¹⁴⁰ Entry 24 List II, Seventh Schedule of the Constitution of India.

¹⁴¹ Entry 23 List II, Seventh Schedule of the Constitution of India.

¹⁴² Aruna Venkat, *Environmental Law and Policy* pg. 83 (PHI Learning Pvt. Ltd., New Delhi, 1st Edn., 2011).

Mention should be made of Article 248¹⁴³ which confers Residuary Powers on the Parliament to make laws with respect to any matter not enumerated in Concurrent List or State List. The predominancy of Parliamentary Legislation over State Legislation on matters enumerated in the Concurrent List is subject to Article 254.¹⁴⁴ This Article clarified that in case of conflict between Parliamentary and State legislation the former will prevail over the later. However, State Legislation will prevail over Central Legislation on a matter contained in the Concurrent List only if the State Legislation is passed after the Parliamentary Legislation and it was reserved for the consideration of the President and has received assent from the President.

On the other hand, the Eleventh and Twelfth Schedules to the Constitution list the subjects to be devolved to the rural and urban local governments respectively, but these are carried out concurrently with the state governments. The Eleventh Schedule added by the Constitution Seventy-Third (Amendment) Act, 1992 which received the assent of President on 20.4.1993. This schedule has 8 entries (2, 3, 6, 7, 11, 12, 15 and 29). The environmental functions listed for the rural local governments include land improvement, land consolidation and soil conservation, minor irrigation, water management and watershed development, fisheries, social forestry and farm forestry, minor forest products, drinking water, fuel and fodder non-conventional energy sources and maintenance of community assets. For urban local bodies, the list includes subject like water supply for domestic, industrial, and commercial purposes; public health, sanitation, conservancy and solid waste management; and urban

¹⁴³Article 248 of the Constitution of India States: Residuary powers of legislation- (1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.(2) Such power shall, include the power of making any law imposing a tax not mentioned in either of those lists.

¹⁴⁴Article 254 of the Constitution of India states: 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 matter 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 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.

forestry, protection of the environment and promotion of ecological aspects, provision of urban amenities and facilities such as parks, gardens and playgrounds etc.

Similarly, the Twelfth Schedule of the Constitution added by Seventy-Forth (Amendment) Act, 1992 commands the urban local bodies such as municipalities to perform the functions for the protection of environment and promotion of ecological aspects. The constitutional changes effected in the Seventh Schedule by the Forty-Second Amendment Act, 1976 is a milestone steps, in the direction of the protection of environment. Because the subject of forests originally was in the State list as entry 19, this resulted into no uniform policy by the State so as to protect the forests. By placing the item forest now in the concurrent list by the entry 17-A, along with the State, Parliament has acquired a law making power. Because of the above change, in order to have a uniform policy in the forest management the Government of India in the year 1980 set up the Ministry of Environment and Forests. By virtue of this change Parliament also enacted, the Central Legislation i.e. Forest Conservation Act, 1980, which was amended in 1988. Similarly the insertion of the entry 17-B in the concurrent list has empowered the Parliament to enact a law with a view to protection of wild animals and birds. Although we had a comprehensive legislation in the form of Wildlife Protection Act of 1972 the Forty-Second Amendment has considered the wildlife along with forests. India has also formulated National Action Plan for the protection of wild life. The new entry 20-A in the Concurrent List empowers the Parliament to regulate the population explosion one of the prime cause of the environmental pollution. By these changes, legally and constitutionally now it is possible to take a uniform action in the matters of proper management of the environment.

5.6 The Role of Judiciary for the Management of Bio-Medical Waste

It is important to note here that the abovementioned decided cases of various High Courts and the Apex Court did not specifically dealt with the issues relating to the bio-medical waste although the other types of wastes had been the issues in many cases decided by such courts in India. The environmental concern for bio-medical waste is of recent origin and had not looked into with that seriousness as it was seen in other types of waste. Regarding other wastes, especially solid waste such as rubbish, filth, or any noxious or offensive matter etc. the court has mandated

municipal authorities to ensure their proper and scientific disposal. It also imposes duty on the Pollution Control Boards to assist in the proper disposal of the waste. The matter concerning bio-medical waste for the first time drew the attention in *Dr. B.L. Wadhera v. Union of India*¹⁴⁵ case. The fact of the case is, one, B. L. Wadhera, a lawyer, approached the Apex Court seeking direction to the Municipal Corporation of Delhi (MCD) and New Delhi Municipal Council (NDMC) to perform their statutory duties and in particular the collection, removal and disposal of garbage and other wastes including the hospital waste. The court emphatically pronounced that the 'resident of Delhi have a statutory right to live in a clean city.' Therefore, MCD and NMCD are under a statutory obligation to scavenge and clean the city and 'it is mandatory for these authorities to collect and dispose of the garbage/waste generated from various sources in the city.' It was further observed that 'non-availability of funds inadequacy or inefficiency of the staff, insufficiency of machinery etc. cannot be pleaded as ground for non-performance of their statutory obligations.'

The Court also issued various directives to MCD and NDMC regarding the collection, transportation and disposal of garbage and hospital waste. Directions were also issued to install sufficient number of incinerators particularly in the hospitals with 50 beds or more. Sanitary Land Fills were to be identified for disposal of garbage and solid waste. MCD and NDMC with NEERI were also directed to find out alternate method/methods of garbage and solid waste disposal. It was also mentioned that the residents of Delhi must be educated through mass media regarding their civic duties and that in case they violate any provision of the respective Acts they must be penalised. Directions were also issued in the matter of collecting and disposal of garbage.

The Government was directed to appoint Municipal Magistrate for the trial of the erring persons. And the Central Pollution Board and Delhi Pollution Committee were also directed to send inspection teams to ascertain that collection transportation and disposal of garbage/waste is carried out satisfactorily. Thus, the Court, through this decision tried to evolve a code of conduct for the municipal authorities and general public to collect, and dispose of the garbage/solid waste.

¹⁴⁵ AIR 1996 SC 2969.

It was first case where Court dealt with the right to clean environment of the citizens and obligatory duty of the government and its instrumentalities to keep the city and town clean. The Court also ordered for construction of compost plant—at least five, within a period of six months. And to use the ‘Sanitary Land Fill’ areas for forestry purposes only.

As a sequel to it, the land mark case that drew attention to and changed the manner in which waste is handled in major cities is the ruling in the *Almitra Patel*¹⁴⁶ case. A writ petition was filed by Almitra H. Patel regarding the management of solid waste disposal in four metropolitan cities—namely, Mumbai, Chennai, Calcutta and Delhi. It also referred to Bangalore, but the Court took up the case of National Capital Territory of Delhi. The Court by an order dated January 16, 1996 appointed a Committee headed by Mr. Asim Burman to look into the aspects of ‘municipal solid waste management’. The Committee gave its report which was circulated to all the States.

The pronouncement made by the Supreme Court compelled the Central Government, the Ministry of Environment and Forest to notify the Municipal Solid Waste (Management and Handling) Rules, 2000. The Almitra Patel case brought to fore the need for door-to-door collection of waste, segregation of waste at source as dry and wet, new and appropriate technologies for the handling of waste and final disposal. While it was a good first step in addressing serious concerns relating to waste management, regrettably, the focus of this petition was not on reducing and recycling waste with the concomitant directions to ensure penalties on large polluters and reward efforts to recycle with tax breaks and subsidies. It may well be the subject of another writ petition.

In *Almitra* case, the court also expressed its unhappiness for non-compliance of its directions issued in *Dr. B. L. Wadhwa* case. Therefore, the court again issued ten directions in addition to and not in derogation to the order passed in the *Wadhwa* case, some of which are as follows—

1. The Municipal Corporation of Delhi, NDMC and all other concerned officials to ensure that the relevant provisions of the DMC Act, 1957, New

¹⁴⁶ *Almitra H. Patel v. Union of India*, (1998) 2 SCC 416.

Delhi Municipal Council Act, 1994 and the Cantonments Act, 1924 relating to sanitation and public health prohibiting accumulation of any rubbish, filth, garbage or other polluted obnoxious matters in any premises and/or prohibiting any person from depositing the same in any street or public place shall be scrupulously complied.

2. That the streets, public premises such as parks etc. shall be surface cleaned on daily basis, including on Sundays and public holidays.

3. To levy and recover charges and costs from any person littering or violating provisions of the diverse Acts, Bye-laws and Regulations relating to sanitation and health for violating the directions being issued herein.

4. To ensure proper and scientific disposal of waste in a manner so as to subserve the common good.

5. That the sites for landfills will be identified bearing in mind the requirement of Delhi for the next twenty years within a period of four weeks.

6. To take appropriate steps for preventing any fresh encroachment or unauthorised occupation of public land for the purpose of dwelling resulting in creation of a slum. Further appropriate steps be taken to improve the sanitation in the existing slums till they are removed and the land reclaimed.

7. To identify and make available to the MCD and NDMC within four weeks from today sites for setting up compost plants. Initially considering the extent of solid waste, which is required to be treated by compost plants, the number of sites which should be made available will be eight¹⁴⁷.

Above mentioned directions and direction issued in *Dr. B.L. Wadhwa* case almost forms a code for the collection, transportation and disposal of the municipal solid waste. Thus, the directions issued by the Supreme Court reiterated the local self government has to play an important role in managing the municipal solid waste disposal of the metropolitan cities of India and their in-action, and non-performance and non-compliance of statutory duties and obligation would attract prosecution and punishment.

¹⁴⁷ *Ibid* at pg. 1268

Dinanath Waghmare v. The District Collector, Nagpur District,¹⁴⁸ the present public interest litigation has been filed by the present petitioner, who claims to be a social worker, pointing out to the notice of this Court the unhygienic conditions of the various government hospitals including medical college and hospitals, rural hospitals, cottage hospitals, public health centers and sub centers. After hearing both the parties the court has directed for the constitution of a Committee to see as to what are the lacunae in the system and what are the corrective measures that can be taken for ensuring the right to health.

In *Environment Monitoring Forum v. Union of India and Ors.*,¹⁴⁹ it was held by the court that it is the duty of the institutions generating biomedical waste to take all steps to ensure that such waste is handled without any adverse effect to human health and environment.

*K. Ashok Kumar and Ors. v. State of Tamil Nadu and Ors.*¹⁵⁰, the court observed the issues relating to environmental protection, disposal of biomedical waste, certainly endangers the living condition which definitely attract Article 21 of the Constitution of India which confer fundamental right of living , which means to live with all dignity and the State Government was instructed to comply the section 49 (2) of Town and country planning Act and to follow the other relevant rules to prevent health hazards and environmental distress.

*Qualified Medical Practitioners and Hospitals Association, Kerala v. Union of India*¹⁵¹. This writ petitions is filed by the Bio-Medical Waste Management Committee regarding the insistence for incinerator for the bio-medical wastes. The treatment of bio-medical waste by incineration causes adverse effect on the environment and health of the public. The usage of incineration is clear infringement of the Art.21 of the Constitution of India. The court by passing an interim order permits the members of the petitioner organisation usage of Placenta Anaerobic Bio-Reactor. (PAB) for all anatomical material organs and body parts without bones and Body Parts Anaerobic Bio-Reactor (BPAB) for treatment of medical waste and also directed to issue authorisation for its use till the disposal of the writ petition.

¹⁴⁸ PIL No. 121 of 2013.

¹⁴⁹ MANU/KE/0894/2003.

¹⁵⁰ Available at: Indian.kanoon.org/doc/1041112 (March 17, 2008), (Last visited on Dec. 15, 2015).

¹⁵¹ AIR 2002 SC 3689.

Again in *Maitree Sansad v. State of Orissa*¹⁵², the petitioner, a voluntary organisation has come up with the present writ petition inter alia, alleging that the three Medical Colleges and Hospitals run by the Government in the State as well as various Nursing Homes situated in the city of Cuttack and elsewhere in the State by not following the provisions of law and not taking appropriate steps for due disposal of bio-medical waste are causing air and water pollution inasmuch as the same is hazardous to the health of the local people as well as the patients and their attendants who are treated in the said hospitals/nursing homes. The court held that improper practices such as dumping of bio-medical waste in municipal dustbins, open spaces, water bodies etc., leads to the spread of diseases. Emissions from incinerators and open burning also leads to exposure to harmful-gases-which can cause cancer and respiratory diseases. Exposure to radioactive waste in the waste stream can also cause serious health hazards. An often-ignored area is the increase of in-home healthcare activities. An increase in the number of diabetics who inject themselves with insulin, home nurses taking care of terminally ill patients etc., all generate bio-medical waste which can cause health hazards.

P. K. Nayyar & Ors. v. Union of India & Ors.,¹⁵³ the question answered in this case was whether facility being run in collaboration with a private company of biomedical waste management be deemed near or far away from residential localities which are located at a distance of thirty to forty meters. The residents of Sukhdev Vihar made representations against operation of the said facility, expressing serious concern with respect to adverse effect on their health due to operation of the said facility. The court held that, it is not in dispute that bio-medical waste is a hazardous waste which can be highly injurious to human life that precisely appeared to be reason for it being included in list of prohibited/negative list of industries. 30 meters or it is 40 meters could not be said to be a safe distance in sense that it was not unlikely to adversely affect health of residents of nearby complex and/or nearby habitats. In fact decision of Government of NCT of Delhi, which was a partner in concerned venture to shift it from present site was also an acknowledgement that being in close proximity of the residential colonies, facility was likely to cause damage to environment and adversely affect health of nearby residents. Further right to live in an

¹⁵² 2007 (Supp.1) OLR 246.

¹⁵³ 198 (2013) DLT689.

environment free from pollution is a facet of fundamental right of life and liberty guaranteed under Article 21 of the Constitution.

5.7 An Overview

A close look at these provisions makes it clear that our constitution enshrines ample provisions to control and regulate environmental pollution. Under these, a good number of legislations have been enacted and they are capable of producing good results but the most important thing is the strong and effective implementations of the laws to produce desired effect. The matter relating to Bio-Medical Waste (BMW), also can be properly handled under these provisions. The coordinate and uniform action by both the legislators and the judiciary would help in minimising the menace of health & hygiene problem on the subject.