

CHAPTER - 2

CONSTITUTIONAL CONTOURS AND ENVIRONMENT

The preamble of the Constitution of India, which sets out the main objects and priorities of the Constitution, has not placed environmental justice along with 'Justice': Social, economic and political. The preamble came into being after complete codification of the substantive provisions of the Constitution. Therefore, it is not merely a statement of objects or a key to open the mind of makers but a precise declaration of what is embodied in the Constitution.

Looking into the Constitutional history of the preamble, the Supreme Court of India has also ruled that the preamble of the Constitution is a part of the Constitution.¹ "The preamble assures dignity of individual, but does not signify its connotation. Is it to be evaluated on material possession, education or cultural tradition? Human spirit and equation with nature had been ingredients of cultural bondage. Otherwise also the dignity of individual depends on quality of environment".²

It may be noted that the founding fathers of the Indian Constitution did not show their concern towards the need for providing environmental strategies in the fundamental law of the country. It is evident from the scheme envisaged in the original Constitution, where one cannot find the use of the word 'environment' in any of the 395 Articles or Schedules. It is only in 1976 that the constitutional environmentalism became clearly pronounced with the enactment of the Constitution (Forty Second Amendment) Act, 1976.

It seems that parliament was sensitized by the Stockholm Declaration adopted by the International Conference on Human Environment in 1972. The Declaration emphasized that man bears a solemn responsibility to protect and improve the environment for the present and future generation. The Forty second Amendment inserted Articles 48-A and 51-A(g), two environment related Articles, in the form of Directive Principles of State Policy and Fundamental Duties respectively. "The

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1. *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461, the earlier decision of the Supreme Court that Preamble is not part of the constitution, in *Berubari Union & Exchange of Enclaves Re*, AIR 1960 SC 845, Overruled.
 2. Ashok A. Desai, "Constitutional Accountability Towards Environment," 42 *JILI* 160, 165 (2000).

incorporation of protection of environment as an obligation of the State in the Directive Principles and the mandate in Article 51-A to the citizen of India as a part of Fundamental duty are indications of the Constitutional recognition of importance of environment".³

2.1. Duty of the State :

Part - IV of the Constitution of India contains the directive principles of State policy. These directives are the active obligations of the State, they are policy prescriptions for the guidance of the Government.

Article 37 of part - IV of the Constitution limits the application of the directives principles by declaring that these principles shall not be enforceable by any Court. Therefore, if a directive is not followed by the State, its implementation cannot be secured through judicial proceedings. On the other hand these principles are fundamental in the governance of the country and it is duty of the State to apply these principles during the process of law making.

The importance of directive principles has been explained by the Chairman of the Drafting Committee, Dr. Ambedkar, at the time of introduction of the Draft Constitution in the Constituent Assembly in following words -

If it is said that the Directive Principles have no legal force ... I am prepared to admit it. But I am not prepared to admit that they have no sort of binding force at all. Nor am I prepared to concede that they are useless because they have no binding force in law ... the Draft Constitution as framed only provides a machinery for the government of the country. It is not a contrivance to install any particular party in power as has been done in some Countries.... But whoever captures powers will not be free to do what he likes with it. In the exercise of it, he will have to respect these instruments of instructions which are called Directive Principles. He cannot ignore them. He may not have to answer for their breach in a Court of Law. But he will certainly have to answer for them before the electorate at election time. What great value these directive principles possess will be realized better when the forces of right contrive to capture power.⁴

Dr. Ambedkar's view that governments in power would be obliged to have regard to directive principles for if they did not, they would face a day of reckoning

3. *M.C Mehta v. Union of India*, (1991) 2 SCC 353, 356.

4. Constituent Assembly Debate, vol VII, 41.

when fresh elections would be held, has so far been proved wrong as many of the directive principles are yet to be implemented, even after more than five decades of the commencement of Indian Constitution.

Article 48-A of the Constitution declares, "the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country".

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. One of them required the State to "conserve and develop the water, soil and other natural resources", while another tried to ensure that the State's endeavour to protect and improve the environment would not harm tribal forest dwellers. The proposal to include 'mineral wealth' and to require the government to undertake adequate and effective measures to check environmental pollution' were also discussed by the Parliament. But none of these proposed amendments were accepted by the government on the ground that the broad terms of a directive principle need not contain details.⁵

Seervai has correctly pointed out that -

Article 48-A reflects an increasing awareness of people all over the world of the need to preserve the environment from pollution, especially in urban areas. Smoke, industrial waste, deleterious exhaust fumes from motor cars and other 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 recognized 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 rightly emphasizes the fact that the State should try not only to protect but to improve the environment.⁶

As the application of the principles contained in part - IV of the Constitution is limited "jurisprudentially speaking, this provision imposes only an imperfect non-justiciable positive duty on the State. Therefore, the citizens for whose benefit and welfare the protection and improvement of environment is Constitutionally envisaged

5. *Lok Sabha Debates*, Eighteenth Session, Fifth series, Vol. LXV, No. 5, Oct. 29, 1976, Col. 94-116; *Parliamentary Debate : Rajya Sabha*, Official Report, Vol. XCVIII, No. 5, Nov. 9, 1976, Col. 158 - 71.

6. H.M. Seervai, *Constitutional Law of India : A Critical Commentary*, 2019 (Vol. 2, 1993).

have no *locus standi* in the Constitutional Environmental Scheme".⁷ The experience however, shows that "although unenforceable by a Court, the directive principles are increasingly being cited by judges as complementary to the fundamental rights. In several environmental cases the Courts have been guided by the language of Article 48-A".⁸ The following observation of the Supreme Court depicts the responsible approach adopted by the Court -

Wherever a problem of ecology is brought before the Court, the Court is bound to bear in mind Article 48-A of the Constitution ... and Article 51-A(g) ... 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 must depend on the circumstances of the case. The Court may always give necessary directions. However, the Court will not attempt to nicely balance relevant considerations. When the question involves the nice balancing of relevant considerations, the Court may feel 'justified' in resigning itself to acceptance of the decision of the concerned authority.⁹

There are some other provisions apart from Article 48-A, in Part - IV of the Constitution wherein environmental matters may be covered. One such provision is Article 39(e)¹⁰, which provides that "the State shall, in particular, direct its policy towards securing... that the health and strength of workers, men and women, and the tender age of children are not abused..."

Article 47 provides that "the State shall regard the raising of the level of nutrition and standard of living of its people and the improvement of public health as among its primary duties..." Apparently this Article directs the State to protect and improve the environment without which public health cannot be assured. The Supreme Court

7. B. Errabi, "Environmental Protection : Constitutional Imperatives - Indian Experience, in R.P. Anand et.al. (ed.) *Law Science and Environment*, 118 (1987).

8. S. Diwan & A. Rosencranz, *Environmental law and Policy in India*, 45 (2nd Ed. 2001).

9. *Sachidanand Paney v. State of West Bengal*, (1987) 2 SCC 295, 305.

10. In many cases the Supreme Court has been guided by Article 39 while delivering environmental Justice, eg. *Charanlal Shahu v. Union of India*, AIR 1990 SC 1480; *Bandhua Mukti Morcha v. Union of India*, (1991) 4 SCC 177; *Consumer Education & Research Centre v. Union of India*, AIR 1995 SC 922; *Samatha v. State of A.P.*, AIR 1997 SC 3297; *M.C. Mehta v. Union of India* (2002) 4 SCC 356.

has also referred this Article in many decisions involving environmental matters.¹¹

Articles 39(e), 47 and 48-A of the Directive Principles of State Policy have a definite bearing on environmental problems. They, by themselves and collectively impose a duty on the State to secure the health of the people, improve public health and protect and improve the environment.

Environmental pollution may damage the monuments of national importance, the protection of which is a duty of the State under Article 49 of the Constitution. Article 49 of the Directive Principles of State Policy provides for the obligation of the State to protect monuments, places and objects of national importance. In the *Taj Case*¹² the Supreme Court of India seems to have got inspiration from Article 49 while protecting the Taj Mahal, a monument protected under the Ancient Monuments and Archaeological Sites and Remains Act, 1958, from harmful Industrial emissions originating in and around Agra.

Article 51(c) directs the State to foster respect for international law and treaty obligations in the dealings of organised peoples with one another. Therefore, in view of the range of international treaties on different aspects of environmental protection the State's obligation to 'foster respect for international law and treaty obligations' in Article 51(c), read in conjunction with the specific treaty provisions, may also serve to strengthen the hands of pro-conservation judge".¹³

Krishna Iyer, J. has made following observation highlighting the importance of the Directive Principles in the case of *Ratlam Municipality v. Vardhichand*,¹⁴ "why drive common people to public interest action? Where Directive Principles have found statutory expression in Do's and Don'ts, the Court will not sit idly and allow municipal government to become a statutory mockery".

11. *Bandhua Mukti Morcha v. Union of India*, (1991) 4 SCC 177; *Virendra Gaur v. State of Harayana*, (1995) 2 SCC 577; *Vellore Citizens' Welfare forum v. Union of India*, AIR 1996 SC 2715; *M.C. Mehta v. Union of India*, (1997) 3 SCC 715; *M.C. Mehta v. Union of India*, (1998) 6 SCC 60; *M.C. Mehta v. Union of India*, (2002) 4 SCC 356.

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

13. *Supra* note 8 at 46.

14. AIR 1980 SC 1622, 1631.

2.2. Citizen's Obligation :

The Constitution (Forty-Second Amendment) Act, 1976 inserted Part-IV-A into the Constitution of India. This new part prescribes certain fundamental duties for the citizens of India. The sole Article of this part, Article 51-A, specifies ten fundamental duties. According to Article 51-A(g), "it shall be the duty of every citizen of India - to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures".

"Since the duties are imposed upon the citizen and not upon the State, legislation is necessary for their implementation".¹⁵ But some Courts have used this provision as an effective tool for the protection of environment. The Rajasthan High Court has made a very interesting interpretation of this provision while deciding a Public Interest litigation.¹⁶ The Court observed -

We can call Article 51-A ordinarily as the duty of the citizens, but in fact it is the right of the citizens as it creates the right in favour of the citizen to move to the Court to see that the State performs its duties faithfully and the obligatory and primary duties are performed in accordance with the law of land. Omissions or commissions are brought to the notice of the Court by the citizen and thus, Article 51-A gives a right to the citizen to move the Court for the enforcement of the duty cast on State, instrumentalities, agencies, departments, local bodies and statutory authorities created under the particular law of the State.¹⁷

The Apex Court has also recognised the importance of Article 51-A(g). In *Ganga pollution Case*,¹⁸ Justice Venkataramiah opined -

Having regard to the grave consequences of the pollution of water and air and need for protecting and improving the natural environment which is considered to be one of the fundamental duties under the constitution, we are of the view that it is the duty of the Central Government to direct all the educational institutions throughout India to teach at least for one hour in a week lesson relating to the protection and improvement of the natural environment including forests, lakes, rivers and wildlife in the first ten classes.¹⁹

15. M.P. Singh (ed.), *V.N. Sukla's Constitution of India*, 313 (9th ed.2001).

16. *L.K. Koolwal v. State of Rajasthan*, AIR 1988 Raj 2.

17. *Id.* at 4.

18. *M.C. Mehta v. Union of India*, (1988) 1 SCC 471.

19. *Id.* at 491.

Thus, the 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 us remind every citizen that it is his fundamental duty as enshrined in Article 51-A(g) of the Constitution".²⁰

After making reference to Article 48-A and Article 51-A(g), the High Court of Himachal Pradesh concluded -

Thus there is both a Constitutional pointer to the State and a Constitutional duty of the citizens not only to protect but also to improve the environment and to preserve and safeguard the forests, the flora and fauna, the rivers and lakes and all the other water resources of the country. The neglect or failure to abide by the pointer or to perform the duty is nothing short of a betrayal of the fundamental law which the State and, indeed, every Indian, high or low, is bound to uphold and maintain.²¹

In the opinion of Andhra Pradesh High Court, the duty to protect the environment extends to Courts also. The High Court made it clear that "protection of the environment is not only the duty of the citizen but it is also the obligation of the State and all other State organs including Courts".²² The Courts have reminded time and again to both State as well as citizens about their duties towards environment while deciding environmental issues by referring to Articles 48-A and 51-A(g) of the Constitution.²³

20. *Rural litigation and Entitlement Kendra v. State of U.P.*, AIR 1987 SC 359, 364.

21. *Kinkri Devi v. State of Himachal Pradesh*, AIR 1988 HP 4, 8.

22. *T. Damodhar Rao v. S.O. Municipal Corp., Hyderabad*, AIR, 1987 A.P. 171, 181.

23. *Rural litigation and Entitlement Kendra v. State of U.P.* AIR 1987 SC 359; *Sachinand Pandey v. State of W.B.* (1987) 2 SCC 295; *M.C. Mehta v. Union of India*, (1987) 4 SCC 463; *M.C. Mehta v. Union of India*, (1988) 1 SCC 471; *Charan Lal Shahu v. Union of India*, (1990) 1 SCC 613; *M.C. Mehta v. Union of India*, (1991) 2 SCC 353; *Virender Gaur v. State of Haryana*, (1995) 2 SCC 613; *M.C. Mehta v. Union of India*, (1996) 2 SCC 594; *Indian Council for Enviro-legal Action v. Union of India*, (1996) 3 SCC 212; *Vellore citizens' welfare forum v. Union of India*, (1996) 5 SCC 647; *Indian Council for Enviro-legal Action v. Union of India*, (1996) 5 SCC 281; *S. Jagannath v. Union of India*, (1997) 2 SCC 87; *Animal and Environment legal Defence Fund v. Union of India*, (1997) 3^{SCC} 549; *M.C. Mehta v. Union of India*, (1997) 3 SCC 715; *M.C. Mehta v. Kamal Nath*, (2000) 6 SCC 213.

2.3. Fundamental Right to Wholesome Environment :

Part - III of the Constitution of India contains fundamental rights. These rights were included in the Constitution after long debates in the Constituent assembly. "After discussing the subject of fundamental rights-described by Ambedkar as "the most criticized part" of the Constitution - for as many as thirty-eight days - eleven days in the sub-committee, two in the Advisory Committee and twenty five in the Constituent Assembly - the Assembly ultimately adopted the comprehensive and impressive array of fundamental rights".²⁴

The Constitution contains these fundamental right under six broadly divided categories viz, (i) Right to equality (ii) right to freedom (iii) right against exploitation (iv) right to freedom of religion (v) cultural and educational rights and (vi) right to constitutional remedies. The incorporation of Bill of Rights in American Constitution seems to have inspired the framers of the Indian Constitution "... [B]ut whereas the American Bill of Rights declares rights in terms apparently absolute leaving it to the Courts to limit the rights thus declared, our Constitution declares the right and prescribe the limitations in the Constitution itself. By enacting Article 32 the Constitution created a new fundamental right, namely, the right to move the Supreme Court by Part - III entitled Fundamental Rights.²⁵ Some of these fundamental rights can only be claimed by an Indian citizen; others apply equally to all persons including non-citizens also. Mainly these rights are available against the mighty powers of the State but some rights are enforceable against private individuals as well.

These fundamental rights represent the basic values cherished by the people of this country since the 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. They weave a 'pattern of guarantee' on the basic structure of human rights, and impose negative obligations on the State not to encroach on individual libertwhin its various discussions.²⁶

The Constitution guarantees protection of right to life and personal liberty of the individual, pollution free environment is essential for enjoyment of right to life,

24. B. Shiva Rao, *The Framing of India's Constitution -A Study*, 179 (1968).

25. H.M. Seervai, *Constitutional Law of India : A Critical Commentary*, 159 (Vol. 1. 1997).

26. *Maneka Gandhi v. Unioin of India*, AIR 1987 SC 597, 619.

therefore, it is important to study Article 21.

Article 21 of the Constitution of India provides that "no person shall be deprived of his life or personal liberty except according to procedure established by law". The right to life which is the most fundamental of all is also the most difficult to define. Certainly it cannot be confined to a guarantee against the taking away of life; it must have a wider application".²⁷ The U.S. Constitution has similar provision by virtue of 5th and 14th amendments, which provides that no person shall be deprived of his "life, liberty or property without due process of law". Field, J. in *Munn v. Illinois*²⁸ observed about the scope of right to life as follows -

By the term 'life' as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of an arm or leg, or the putting out of an eye, or the destruction of any other organ of the body through which the soul communicates with the outer world.

This observation has been accepted by the Supreme Court of India in the case of *Kharak Singh v. State of U.P.*²⁹ The scope of right to life under Article 21 was further expanded in *Francis Coralie v. Union Territory of Delhi*,³⁰ the Supreme Court held that "any act which damages or injures or interferes with the use of any limb or faculty of a person, either permanently or even temporarily, would be within the inhibition of Article 21. The Court further held -

.... the right to life includes the right to live with human dignity and all that goes along with it, namely, the base necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.³¹

This observation of the Court regarding scope of right to life has been fully endorsed by the subsequent decisions of the Court.³² The term 'life' includes all those

27. *Supra* note 15 at 164.

28. (1877) 94 U.S. 113.

29. AIR 1963 SC 1295.

30. AIR 1981 SC 746.

31. *Id.* at 753.

32. *Baudhua Mukti Morcha v. Union of India*, AIR 1984 SC 802; *Vincent v. Union of India*, AIR 1987 SC 990; *M.C. Mehta v. Union of India* AIR 1987 SC 1086 etc.



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aspects of life which go to make a man's life meaningful, complete and worth living.³³

The expression 'liberty' is a very comprehensive term and let alone it would include not merely freedom to move about unrestricted but such liberty of conduct, choice and action as the law gives and protects.³⁴ In U.S.A. Courts have given a very wide meaning to 'liberty'. It takes in all the freedoms.³⁵ The term 'liberty' in the 5th and 14th amendments to the Constitution of the U.S. has been given a very wide meaning. "The expression is not confined to mere freedom from bodily restraint, and 'liberty' under law, but extends to the full range of conduct which the individual is free to pursue".³⁶

Under Article 21 of the Constitution of India, in contrast with the U.S. Constitution, the term 'liberty' has been qualified by the term 'personal'. This may lead to an inference that the scope of liberty under Indian Constitution is narrower than in the American Constitution. In *Gopalan Case*³⁷ it was concluded by the Supreme Court of India that 'personal liberty' was confined to freedom from detention or physical restraint. While considering the meaning and scope of 'personal liberty' in *Kharak Singh v. State of U.P.*,³⁸ the majority rejected that 'personal liberty' was confined to "freedom from physical restraint or freedom from confinement within the bounds of a prison" and held that -

'personal liberty' is used in the Article as a compendious term to include within itself all the varieties of rights which go to make up the 'personal liberties of man other than those dealt with in the several clauses of Article 19(1). In other words, while Article 19(1) deals with particular species or attributes of that freedom, 'personal liberty' in Article 21 takes in and comprises the residue.³⁹

The majority view in *Kharak Singh Case* was expressed by Subba Rao, J. in following words -

The fundamental right of life and personal liberty have many attributes

33. *Menka Gandhi v. Union of India*, AIR 1978 SC 597 ; *Board of Trustees of the Port of Bombay v. D.R. Nandkarni*, AIR 1983 SC 109.

34. *Allegier v. Louisiana*, (1897) 165 U.S. 578.

35. *Supra* note 28.

36. *Supra* note 15 at 167.

37. *A.K. Gopalan v. State of Madras*, AIR 1951 SC 27.

38. AIR 1963 SC1295.

39. *Id.* at 1302.

and some of them are found in Article 19. If a person's fundamental right under Article 21 is infringed, the state can rely upon a law to sustain the action, but that cannot be complete answer unless the said law satisfies the test laid down in Article 19(2) so far as the attributes covered by Article 19(1) are concerned.⁴⁰

The highly debated issue of the scope of personal liberty and its relationship with Article 19 was once again raised in *Maneka Gandhi v. Union of India*.⁴¹ Bhagwati, J. reached to the following conclusion -

The expression 'personal liberty' in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19.⁴²

"It is obvious, thus, that we have advanced much ahead of *Gopalan* in amplifying the meaning of 'personal liberty' to include all liberties of an individual other than those which are already included in Article 19, so that Article 19 and 21 would now be regarded as complementary to each other".⁴³

It was the *Maneka Gandhi Case*⁴⁴ that heralded the new era of judicial thoughts by making it aptly clear that the right to life and personal liberty, guaranteed under Article 21 of the Constitution can be infringed only by a 'Just fair and reasonable' procedure. "Narrow interpretation of legal and Constitutional provisions gave way slowly to a more liberal judicial interpretation that kept the purpose of Constitutional guarantees in view. The post-Maneka developments truly reflect the ideals of democratic freedom".⁴⁵ The Court started recognizing several unarticulated liberties that were implied by Article 21 and during this process the Supreme Court interpreted, after some hesitation the right to life and personal liberty to include the right to wholesome environment.

The conflict between developmental needs and environmental protection has been the most controversial issue before the Courts in decide in environmental matters.

40. *Id.* at 1305.

41. AIR 1987 SC 597.

42. *Id.* at 622.

43. D.D. Basu, *Commentary on the Constitution of India*, 106, Vol. D (9th ed. 1993).

44. *Supra* note 41.

45. P. Leelakrishnan, *Environmental Law in India*, 112 (1999).

Incidentally the *Dehradun Quarries Case*⁴⁶ that paved the way for right to wholesome environment has also focused on this continuing conflict. The case was initiated by the order of the Supreme Court to treat a letter received from the Rural litigation and Entitlement Kendra, Dehradun as a writ petition. The main allegation in the letter was related to unauthorised and illegal mining operation carried on in the Mussorie Hills and the area around, adversely affecting the ecology of the areas and leading to environmental disturbances. The Court in its order emphasized the importance of the case in following words -

... this is first case of its kind in the country involving issues relating to environment and ecological balance and the questions arising for consideration are of grave moment and significance not only to the people residing in the Mussoorie Hill range forming part of the Himalayas but also in their implication to the welfare of the generality of people living in the country. It brings into sharp focus the conflict between development and conservation and serves to emphasise the need for reconciling the two in the larger interest of the country.⁴⁷

While passing order for closure of certain lime-stone quarries the Court was conscious about the hardship caused to the workmen and lessees of quarries who had invested large sums of money, considerable time and effort. According to the Court, however, "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 environment".⁴⁸

In its judgment the Supreme Court pointed out the importance of Himalayan range and Doon Valley and thus observed -

At present the valley is in danger because of erratic irrational and uncontrolled quarrying of lime-stone. The landscape has been stripped bare of its verdant cover... Reckless mining, careless disposal of the mine debris and random blasting operations have disturbed the natural water system and the supply of water both for drinking and irrigation has substantially gone down, There is growing apprehension that if mining is carried on in this process, a stage will come when there would be dearth of water in the entire

46. *Rural litigation and Entitlement Kendra v. State of U.P.*, AIR 1985 SC 652.

47. *Id.* at 655.

48. *Id.* at 656.

belt ... Mining operations in these areas have led to cutting down of the forest. Digging of limestone and allowing the waste to roll down or carried down by rain water to the lower level has affected the villages as also the agricultural lands located below the hills. The naturally formed streams have been blocked. Blasting has disturbed the natural growth, has shaken the soil, loosened the rocky structures and disturbed the entire ecology of the area.⁴⁹

The Supreme Court issued warning to the Governments of the Centre as well as the States that they must realize and remain cognizant of the fact that the stake involved in the matter is large and far-reaching. But the question, whether the deposits should be exploited at the cost of ecology and environmental considerations or the industrial requirement should be otherwise satisfied, was left to the Government and the nation to decide. Moreover, the Court expressed the view that "it may be perhaps possible to exercise greater control and vigil over the operation and strike a balance between preservation and utilisation that would indeed be a matter for an expert body to examine on the basis of appropriate advice, Government should take a policy decision and finally implement the same".⁵⁰

Through another order the Supreme Court reiterated its conclusion that mining in Doon valley area has to be stopped as far as practicable.⁵¹ However, the mining activity was allowed to the extent it is necessary in the interest of the defence of the country as also for safeguarding foreign exchange position.

Thus, judgments in *Dehradun quarries* Cases were passed under Article 32 of the Constitution and involved closure of some of the quarries on the ground that their operation was upsetting ecological balance of the area. "Although Article 21 is not referred to in these judgments of the Supreme Court, these judgments can only be understood on the basis that the Supreme Court entertained those environmental complaints under Article 32 of the constitution as involving violation of Article 21's right to life".⁵²

The indirect approval of the right to humane and healthy environment by the Supreme Court continued further in the *Oleum gas leak* Case.⁵³ Here the Court had to

49. *Rural litigation & Entitlement Kendra v. State of U.P.*, AIR 1987 SC 359, 362.

50. *Id.* at 363.

51. *Rural litigation & Entitlement Kendra v. State of U.P.*, AIR 1987 SC 242, 2428.

52. *T. Damadhar Rao v. S.O. Municipal Corp., Hyderabad*, AIR 1987 A.P. 171, 181.

53. *M.C. Mehta v. Union of India* AIR 1987 SC 965.

deal with a dispute that came because of leakage of Oleum gas from one of the units of Shriram Foods and Fertilizer Industries. The petitioner alleged that as a result of leakage, several persons were affected and one Advocate practising in the Tis Hazari Court died. The issue before the Court for immediate decision was whether to allow the restart of caustic chlorine plant of Shriram Foods and Fertilizer Industries or not? The Court allowed the caustic chlorine plant to be restarted subject to certain stringent conditions. While doing so the Supreme Court observed that the case "raises some seminal questions concerning the true scope and ambit of Article 21 and 32 of the Constitution".⁵⁴ It is clear that by making this observation, the Court was referring to the 'right to life' under Article 21 and the process of enforcement of such right under Article 32 of the Constitution. None the less the Court enlarged the scope of the 'right to life' by empowering State to put restrictions on hazardous industries for the purpose of protecting people's right to life.

In another judgment relating to *Oleum gas leak*⁵⁵ the issue was award of compensation under Article 32 of the Constitution for violation of fundamental right. An objection was raised on behalf of Shriram Food and Fertilizer Industries that the Court should not proceed to decide the issue relating to claim of compensation because no such claim was made originally in the writ petition. The Supreme Court held, "there is no reason why these applications for compensation which have been made for enforcement of the fundamental right of the persons affected by the oleum gas leak under Article 21 should not be entertained. The Court while dealing with an application for enforcement of a fundamental right must look at the substances and not the form..."⁵⁶

In this case, once again, the Supreme Court did not specifically declare the existence of the right to clean environment under Article 21 of the Constitution, "but the Court evolved the principle of absolute liability of compensation through interpretation of the constitutional provision relating to right to live and to the remedy under Article 32 for violation of fundamental rights. The premise on which the decision is rendered is clear and unambiguous-the fundamental right to a clean and healthy

54. *Id.* at 965.

55. *M.C. Mehta v. Union of India*, AIR 1987 SC 1086.

56. *Id.* at 1089.

environment".⁵⁷

In *Kanpur Tanneries Case*,⁵⁸ the Supreme Court dealt with the problem of water pollution of the river caused by certain tanneries at Jajmau area near Kanpur. The petition was initiated by a public-spirited lawyer before the Supreme Court under Article 32 of the Constitution for issue of writ/order/direction in the nature of *mandamus* to the respondents restraining them from letting out the trade effluents into the river Ganga till such time they put up necessary treatment plants for treating the trade effluents in order to arrest the pollution of water in the river Ganga.

The Court rejected the lame excuses of financial difficulties raised by some tanneries who wanted to avoid the installation of primary treatment plants and passed order directing some tanneries to stop the running of their units, if they fail to set up primary treatment plants.

Mr. Justice K.N. Singh supplementing the judgment expressed the consciousness of the Court about the difficulties that closure of tanneries might bring like unemployment, loss of revenue but he said, from the other hand "life, health and ecology have greater importance to the people".⁵⁹

In this decision also there is no reference to the 'right to life' and Article 21 of the Constitution, but the judgment shows that the Court passed the orders on the basis of violation of fundamental rights by alleged pollution, as the Court's intervention and issuance of direction was under Article 32 of the Constitution despite the fact that remedy was available under the Water (Prevention and Control of Pollution) Act, 1974.

Thus, once again Supreme Court used Article 32, a Constitutional provision for enforcement of fundamental rights guaranteed under the Constitution, without mentioning that it is being used for protection of the 'right to environment', which is an important but unenumerated facet of the 'right to life' under Article 21.

Various High Courts in the Country took a leaf out of judgments of the Apex

57. *Supra* note 45 at 114.

58. *M.C. Mehta v. Union of India*, AIR 1988 SC 1037.

59. *Id.* at 1084.

Court and in more specific and direct forms declared that the concept of right to life, under Article 21 of the constitution, envisages the right to environment. *L.K Koolwal v. State of Rajasthan*⁶⁰ is a landmark case, here the petitioner complained about the acute sanitation problem in the city of Jaipur which was hazardous to the life of the citizens. The High Court accepted that "insanitation leads to a slow poisoning and adversely affects the life of the citizen and invites the death at an earlier date than the natural death".⁶¹ In its order the Court held that "maintenance of health, preservation of the sanitation and environment falls within the purview of Article 21 of the Constitution as it adversely affects the life of the citizen and it amounts to slow poisoning and reducing the life of the citizen because of the hazards created, if not checked".⁶² The Court directed the Municipality to remove the dirt, filth etc. within a period of six months and clean the entire Jaipur city.

In *T. Damodhar Rao v. S.O. Municipal Corp. Hyderabad*,⁶³ the dispute relating to use of a land for residential purpose by the Life Insurance Corporation and the Income Tax Department came before the Court. The said land was reserved for laying a recreational park in the developmental plan of the city but the ownership of the land belonged to the Life Insurance Corporation which later transferred some portion of it to the Income Tax Department. The Court issued writ of *mandamus* forbidding the Life Insurance Corporation of India and the Income Tax Department, Hyderabad, from raising any structures etc. or using the land for residential purposes. Examining the matter from the Constitutional point of view the Court held -

... the enjoyment of life and its attainment and fulfilment guaranteed by Article 21 of the Constitution embraces the protection and preservation of nature's gifts without (which) life cannot be enjoyed. There can be no reason why practice of violent extinguishment of life alone should be regarded as violative of Article 21 of the Constitution. The slow poisoning by the polluted atmosphere caused by environmental pollution and spoilation should also be regarded as amounting to violation of Article 21 of the Constitution.⁶⁴

Further the High Court referred the decision of Apex Court on *Dehardoon*

60. AIR 1988 Raj 2.

61. *Id.* at 3.

62. *Id.* at 4.

63. AIR 1987 A.P. 171.

64. *Id.* at 181.

es Case⁶⁵ and held that the Supreme Court on an application under Article 32 ordered the closure of some quarries on the ground that their operations were upsetting ecological balance. Although Article 21 is not referred to in the judgment of the Supreme Court, the judgment can only be understood on the basis that the Supreme Court entertained those environmental complaints under Article 32 of the constitution as involving violation of Article 21's right to life.

The High Court of Himachal Pradesh issued a note of caution while dealing with the issue of the excavation of lime stone and danger to the adjoining lands, water resources, pastures, forests, wild life, ecology, environment and inhabitants of the area in the following words -

If the wise and sagacious counsel imparted to the Government, at the Centre as well as in the State, to strike a just balance between the tapping of the natural resources for the purposes of the socio-economic development and the preservation and protection of the ecology, the environment and the natural wealth and resources by the adoption of a long-term perspective planning is not heeded and effective steps in the directions of implementing the same are not taken with the utmost expedition, there will not only be a total neglect and failure on the part of the administration to attend to an urgent task in the national interest but also a violation of the fundamental rights conferred by Articles 14 and 21 of the Constitution.⁶⁶

Life cannot be possible without clean drinking water therefore, right to clean water is one of the attributes of the right to life in Article 21 of the Constitution. In *Attakoya Thangal v. Union of India*⁶⁷ the petitioner urged that ground water resources in Lakshadweep islands were limited and potable water was in short supply and the scheme of administration to augment water supply, by digging wells and by drawing water from wells to meet increasing needs would upset the fresh water equilibrium leading to salinity in the available water resources as large scale withdrawals with electric and mechanical pumps could deplete the water sources, causing seepage or intrusion of saline water from the surrounding Arabian Sea. The Kerala High Court asked for a more detailed study to ascertain whether the scheme, if allowed, would upset the underground fresh water. The Court stressed the importance of water

65. *Supra* note 46.

66. *Kinkri Devi v. State of Himachal Pradesh*, AIR 1988 HP 4, 9.

67. 1990 (1) KLT 580.

management and observed -

... the administrative agency cannot be permitted to function in such a manner as to make inroads into the fundamental right under Article 21. The right to life is much more than the right to animal existence and its attributes are many fold, as life itself. A prioritisation of human needs and a new value system has been recognised in these areas. The right to sweet water and the right to free air, are attributes of the right to life, for these are the basic elements which sustain life itself.⁶⁸

The industrial establishment in and around residential colonies are another cause of concern, more so, where the industries have mushroomed contrary to the development plans. In *V. Lakshmipathy v. State of Karnataka*⁶⁹ the same issue came before the High Court of Karnataka. The High Court held that once a development plan had earmarked the area for residential purpose, the land was bound to be put to such use only. The High Court pointed out -

The right to life inherent in Article 21 of the constitution of India does not fall short of the requirement of quality of life which is possible only in an environment of quality where, on account of human agencies, the quality of air and quality of environment are threatened or affected, the Court would not hesitate to use its innovative power ... to enforce and safeguard the right to life to promote public interest.⁷⁰

Thus, High Courts, it seems, were more enthusiastic and active in accepting and declaring that 'right to life' in Article 21 includes 'right to environment'.

The Supreme Court came very close to almost making a declaration that the right to environment is one of the attributes of Article 21 of the Constitution in the case of *Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P.*,⁷¹ the Court observed -

Article 32 is a great and salutary safeguard for preservation of fundamental rights of the citizens. Every citizen has a fundamental right to have the enjoyment of quality of life and living as contemplated by Article 21 of the Constitution of India. Anything which endangers or impairs by conduct of anybody either in violation or in derogation of laws, that quality of life and living by the people is entitled to be taken recourse of Article 32 of the

68. *Id.* at 583.

69. AIR 1992 Kant 57.

70. *Id.* at 70.

71 (1990) 4 SCC 449.

Constitution.⁷²

This case was filed in the form of Public Interest Litigation but the actual reason, as found by the Court, was the long standing rivalry and animosity between the petitioners and the mill owners therefore, the petition was dismissed and the aforesaid observation of the Court could not be applied to the facts of the case.

In *Subhash Kumar v. State of Bihar*⁷³ the primary purpose of filing the public interest litigation, according to the Court, was not to serve any public interest; instead it was the self-interest of the petitioner who wanted to make profit in his business by collecting the sludge/slurry flowing out of the washeries of the respondents. The Court dismissed the petition with costs and used this opportunity to declare that Article 21 includes the right to enjoy pollution-free water and air as they are necessary for full enjoyment of life.

All doubts relating to right to environment under Article 21 were removed after the judgment of the Supreme Court in *Virender Gaur v. State of Haryana*.⁷⁴ In this case the Court observed -

Article 21 protects right to life as a fundamental right. Enjoyment of 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 facet of right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment.⁷⁵

Thus, about ten years after entertaining the first case involving environmental matters under Article 32 of the Constitution, the Supreme Court revealed the name of the fundamental right being protected by it in clear and unambiguous terms and settled the mystery of environmental rights under Article 32.

72. *Id.* at 452.

73. AIR 1991 SC 420.

74. (1995) 2 SCC 577.

75. *Id.* at 580.

2.4. Right to Livelihood vis-a-vis Environment :

The Supreme Court has recognised another aspect of the right to life enshrined under Article 21 of the Constitution viz. the right to livelihood. There is a real chance of clash of these rights i.e. right to environment and right to livelihood as government's action to close down industrial units for protection of environment may result in loss of job, dislocation of poor workers and might disrupt badly the lifestyles of people heavily dependent on such industries.

The right to livelihood has been recognised by the Supreme Court in the case of *Olga Tellis v. Bombay Municipal Corporation*.⁷⁶ In this case the scheme of government to deport pavement dwellers from Bombay to their places of origin was challenged by the petitioners. The petitioners, a journalist and two pavement dwellers, argued that the right to life includes the right to livelihood and eviction of pavement dwellers from their slum and pavement dwelling will result in deprivation of livelihood for these poor people and therefore, the scheme is unconstitutional. The Court accepted the petitioners argument and ruled as follows -

Deprive a person of his right to livelihood and you shall have deprived him of his life ... The State may not by affirmative action, be compellable to provide adequate means of livelihood or work to the citizens. But, any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21.⁷⁷

The Court, therefore, issued direction to the Municipal Corporation to provide alternative sites or accommodation to the slum and pavement dwellers near to their original sites; and to provide basic amenities to slum dwellers.

In *Banawasi Seva Ashram v. State of Uttar Pradesh*,⁷⁸ the Supreme Court permitted the acquisition of the land for Rihand Super Thermal Power Project but not before the National Thermal Power Corporation (NTPC) agreed to provide certain facilities to the ousted forest dwellers. The Court used this opportunity to detail out safeguards for the protection of tribal forest dwellers who were being ousted from

76. AIR 1986 SC 180.

77. *Id.* 194.

78. AIR 1987 SC 374.

their forest land by the NTPC.

In many other cases the Supreme Court passed orders requiring State agencies and concerned person to resettle and rehabilitate the workers or other persons who were being displaced by the decision of the Court or of the Government to close down an industry or to relocate at a suitable place. The interest of workers who get their livelihood from such industry has been taken care of by the Court in many cases.⁷⁹

2.5. Right to Equality :

Article 14 of the Constitution guarantees to every person the right- not to be denied equality before the law or the equal protection of the laws. The possibility of infringement of this Article by a government decision having impact on the environment can not be ruled out. Article 14 strikes at arbitrariness "because an action that is arbitrary must necessarily involve a negation of equality".⁸⁰

Thus, permission for contractions that is contrary to town planning regulation by the municipal authority may be challenged. Similarly, Article 14 may be invoked to challenge governmental sanction of projects having adverse impact on the natural environment and where such sanctions involves arbitrary considerations.

In State of *H.P. v. Ganesh Wood Products*,⁸¹ the Supreme Court opined -

While acting in its executive capacity, the Government is entitled to lay down policies and preferences in the interest of State, its economy awaken ... The only obligation of the State in such an event would be to extend a fair and equitable treatment to all persons coming before it.⁸²

2.6. Freedom of Trade :

Article 19(1)(g) of the Constitution guarantees to all citizens of India, the right to practise any profession or to carry on any occupation or trade or business. The freedom, however, is not uncontrolled, for clause (6) of the Article authorises legislation to -

79. *Rural litigation and Entitlement Kendra v. State of U.P.*, AIR 1988 SC 2187; *M.C. Mehta v. Union of India*, AIR 1997 SC 734; *M.C. Mehta v. Union of India*, (1997) 2 SCC 411, etc.

80. *Ajay Hasia v. Khalid Mujib Shervardi*, AIR 1981 SC 487, 499.

81. (1995) 6 SCC 363.

82. *Id.* at 376.

- (i) impose reasonable restriction on the right in the interest of the general public;
- (ii) Prescribe professional or technical qualifications necessary for carrying on any profession, trade or business; and
- (iii) enable the State to carry on any trade or business to the exclusion of private citizens, wholly or partially.

The aggrieved industrialist may resort to Article 19 in case his trade and business interests are affected by the action of governmental agencies in the name of environmental protection. "As environmental regulation grows more stringent and its enforcement becomes more vigorous, industrial challenge to agency action is likely to increase. Courts will then need to balance environmental interests with the fundamental right to carry on any occupation, trade or business guaranteed in Article 19(1)(g)."⁸³ Various standards have been prescribed by the Government for discharge of different pollutants. An industry may challenge a very stringent standard which can not be complied with, despite best efforts by available technology or if it is otherwise unreasonable. Similarly, Government's decision of relocation or closure of industry may be challenged before the Court.

2.7. Enforcement of Right to Environment :

Once it is established that the right to environment is one of the attributes of 'right to life' under Article 21 of the Constitution and therefore, a fundamental right guaranteed under Part - III of the Constitution of India, there remains no doubt that the 'right to environment' like other fundamental rights is enforceable against the State as defined by Article 12. A law which is inconsistent or in derogation of any fundamental right is void by virtue of Article 13 of the Constitution. "By defining "the State" and "law" very widely, the founding fathers ensured that fundamental rights operated over the widest field. The declaration in the Article 13(1) and (2) making laws inconsistent with, or contrary to, fundamental rights *pro tanto* void would not, by itself, prevent "the State" from violating fundamental rights. To effectively prevent the State from violating fundamental rights, the founding fathers created a new fundamental right by enacting Article 32, which guaranteed the right to move the

83. *Supra* note 8 at 54.

Supreme Court for the enforcement of fundamental rights".⁸⁴

Fundamental rights have got special status in the scheme of the Constitution and they are, barring a few exceptions, available to the individuals to protect themselves against the State action.⁸⁵ These rights 'are not meant to protect persons against the conduct of private persons'. Private action is and can be taken care of by the ordinary law of the land. It is against the might of the State that the individual needs Constitutional protection".⁸⁶ In *State of W.B. v. Subodh Gopal Bose*,⁸⁷ the Supreme Court said, " the sole object of Part - III of the Constitution is to provide protection for the freedoms and rights mentioned therein against arbitrary invasion by the State".

Therefore, it is necessary to understand the meaning of the term 'State' in Article 12 of the Constitution of India. The definition of the term 'State' given in this Article is applicable only for the purposes of Part - III of the Constitution. This definition is inclusive and not exhaustive. Therefore, those authorities and instrumentalities which are not mentioned in the Article may also fall within it if they otherwise satisfy the characteristics of the 'State' as defined in the Article. The authorities and instrumentalities mentions in the Article can be categorised as follows -

- a) the Government and Parliament of India;
- b) the Government and legislature of each of the States;
- c) all local authorities;
- d) other authorities within the territory of India or under the control of the Government of India.

The first two categories consist of the legislative and executive organs of the Centre and the States, third category, i.e., "local authorities" refers to authorities like Municipalities, District Boards, Panchayats, Improvement Trusts, Mining Settlement Boards, etc." But the fourth category, "other authorities" within the territory of India or under the control of the Government of India, is not as clear and specific as the other three categories are. This is the reason why the definition of the 'State' in the Article has been debated upon in various cases before the High Courts and the Supreme

84. *Supra* note 25 at 350.

85. Articles 17, 23 and 24 are available against private persons also.

86. *Supra* note 15 at 20.

87. AIR 1954 SC 92.

Court of India. Some High Courts were of the view that since the expression 'other authorities' is used after mentioning a few of them viz. the government and Parliament of India, the Government and legislature of each of the States, and local authorities, it would be reasonable to construe this expression *ejusdem generis* with government or legislature.⁸⁸ As per this interpretation, the expression, "other authorities" would only include such bodies that are functioning as the agents of the executive government. This narrow interpretation of the expression "other authorities" was rejected by the Supreme Court in *Electricity Board, Rajasthan v. Mohan Lal*.⁸⁹ The Court held after explaining the *ejusdem generis* rule that the rule did not apply in Article 12 because there was no single category running through all the bodies mentioned in the Article. In this case the majority consisting of Bhargava J., Subba Rao C.J., J.M. Shelat and G.K. Mitter J.J., held that the Rajasthan State Electricity Board fell within the definition of "the State" in Article 12 and observed that "... the expression 'other authorities' in Article 12 will include all constitutional or statutory authorities on whom powers are conferred by law. It is not at all material that some of the powers conferred may be for the purpose of carrying on commercial activities".⁹⁰

In *Sukhdev Singh v. Bhagatram*,⁹¹ the Supreme Court reconsidered its earlier decisions on the meaning of the expression 'other authorities' in Article 12. The issue in this case was whether statutory corporation such as those created under the Oil and Natural Gas Commission Act, 1959, came within the definition of 'the State' under Article 12. Three judgments were delivered in the case, Ray, C.J. delivered the majority judgment for himself, Chandrachud and Gupta, J.J.; Mathew, J. delivered a concurring judgment; Alagiriswamy, J. delivered a dissenting judgment. By a majority of 4 to 1 the Supreme Court held that the three Corporations were State within the meaning of Article 12 of the Constitution. The majority in this case generally followed the approach of *Rajasthan Electricity Case*⁹² and observed that the three corporations were created by statutes and had the statutory power to make rules and regulations

88. *University of Madras v. Shantha Bai*, AIR 1954 Mad. 67; *B.W. Devdas v. Selection Committees*, AIR 1964 Mys 6; *Krishna Gopal v. Punjab University*, AIR 1966 Punj 34.

89. AIR 1967 SC 1857.

90. *Id.* 1863.

91. AIR 1975 SC 1331.

92. *Supra* note 89.

which are binding, and were subject to pervasive governmental control. Ray, C.J. concluded that the statutory corporations in question were 'other authorities' within the meaning of Article 12.

In a concurring judgment Mathew, J. adopted a new approach. He laid emphasis on 'public interest' and 'public function' and also introduced the test of 'agency or instrumentality of the State'. He accepted that the concept of 'State' had changed radically in recent years and the State could no longer be looked upon simply as coercive machinery wielding the thunderbolt of authority and therefore, he observed-

[T]he question for consideration is whether a public corporation set up under a special statute to carry on a business or service which Parliament thinks necessary to be carried on in the interest of the nation is an agency or instrumentality of the State and would be subject to the limitations expressed in Article 13(2) of the Constitution. A State is an abstract entity. It can only act through the instrumentality or agency of natural or judicial powers. Therefore, there is nothing strange in the nation or the State acting through a corporation and making it an agency or instrumentality of the State.⁹³

This approach of Mathew, J. has been supported by H.M. Seervai on the additional ground that "it prevents a large-scale evasion of fundamental rights by transferring work done in Government Departments to statutory corporations, whilst retaining Government control".⁹⁴ The line of approach adopted by Justice Mathew was reiterated with approval in *R.D. Shetty v. International Airport Authority*.⁹⁵ Preferring the line of approach adopted by Mathew, J. over the other reasoning extended by different Judges in *Sukhdev Singh Case*, Bhagwati, J. adopted the doctrine of agency and State instrumentality for deciding whether International Airport Authority is 'other authority' or not and made following observation -

Whilst accepting that the test laid down in *Rajasthan Electricity Board v Mohanlal*, AIR 1975 SC 1331, we would ... prefer to adopt the test of Governmental instrumentality or agency as one more test and perhaps more satisfactory one for determining whether a statutory corporation, body or other authority falls within the definition of 'State'. If a statutory Corporation, body or other authority is an instrumentality or agency of Government it would be an authority and therefore, 'State' within the meaning

93. *Supra* note 91 at 1350.

94. *Supra* note 25 at 375.

95. AIR 1979 SC 1628.

of that expression in Article.⁹⁶

In order to ascertain whether a body is agency or instrumentality of the Government, the Court has propounded various tests like the source of finances, financial assistance, the existence of monopoly etc. As it was not possible to formulate an all inclusive or exhaustive test which would adequately answer the question, whether a body is agency or instrumentality of the Government, the Court said whilst formulating the criteria that, "analogical aid can be taken from the concept of 'State Action' as developed in the United States wherein the U.S. Courts have suggested that a private agency if supported by extra-ordinary assistance given by the State may be subject to the same constitutional limitations as the State".

In *Som Prakash Rekhi v. Union of India*,⁹⁷ Krishna Iyer, J. for himself and Reddy, J. delivered the judgment holding that the Bharat Petroleum Corporation registered as a company under the companies Act was State within the extended meaning of Article 12. Here the Court added a further dimension to the concept of State, the idea of human rights jurisprudence, in the following words -

What we wish to emphasise is that merely because a company or other legal person has functional and jural individuality for certain purposes and in certain areas of law, it does not necessarily follow that for the effective enforcement of fundamental rights under our constitutional scheme, we should not scan the real character, of the entity; and if it is found to be a mere agent or surrogate of the state, in fact owned by the State, in truth and in effect an incarnation of the State, constitutional lawyers must not blink at these facts and frustrate the enforcement of fundamental rights despite the inclusive definition of Article 12 that any authority controlled by the Government of India is itself State. Law has many dimensions and fundamental facts must govern the applicability of fundamental rights in a given situation.⁹⁸

The criteria evolved by the Supreme Court in *R.D. Shetty's Case* was again applied by the Court in *Ajay Hasia v. Khalid Mujib*.⁹⁹ This case "marks the culmination of the process which Mathew, J. started as to the meaning of 'other authorities' in Article

96. *Id.* 1646, 1647.

97. AIR 1981 SC 212.

98. *Id.* 218.

99. AIR 1981 SC 487.

12".¹⁰⁰ In this case the issue was whether the Regional Engineering College, Srinagar, sponsored by the Government of India and run by a Society registered under the Jammu and Kashmir Registration of Societies Act, 1893, is 'the State' under Article 12? The Constitution Bench, consisting of five judges, reached to a unanimous conclusion that the society was an instrumentality or agency of the State and Central Government and therefore the society was an 'authority' under Article 12 of the Constitution.

Bhagwati, J. speaking for himself, Chandachud, C.J. and Krishna Iyer, Fazal Ali and Koshal, J.J. laid down the relevant tests for determining whether a corporation was an agency or instrumentality of Government as follows -

- "(a) One thing is clear that if the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government;
- (b) Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character;
- (c) It may also be a relevant factor ... whether the corporation enjoys monopoly status which is the State conferred or state projected;
- (d) Existence of deep and pervasive State control may afford an indication that the Corporation is a State agency or instrumentality;
- (e) If the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as an instrumentality or agency of Government;
- (f) 'Specifically, if a department of Government is transferred to a corporation, it would be strong factor supportive of this inference' of the corporation being an instrumentality or agency of Government."¹⁰¹

If on application of these relevant tests it is found that the corporation is an instrumentality or agency of Government, it would be considered to be 'other authority' and, therefore, 'State' under Article 12 of the Constitution. The Court made it clear that for the purpose of determining whether a corporation was 'the State' under Article 12 it did not matter whether it was created by, or under a statute; or was a Government company, or a company incorporated under the companies Act; or was a society formed under the Societies Registration Act or any other similar statute. Whatever the machinery by which the corporation has been created, if it is an instrumentality or agency of Government, it is 'the State' under Article 12.

100. *Supra* note 25 at 386.

101. *Supra* note 99 at 496.

Applying the test laid down in *Hasia's Case* for determining whether a body or authority was State or not the Supreme Court declared many statutory corporations;¹⁰² companies registered under the companies Act, 1956¹⁰³ and societies registered under the Societies Registration Act,¹⁰⁴ as 'other authority' and therefore, 'the State' under Article 12 of the Constitution.

The question whether a private, enterprise would be 'State' came into the lime light through *M.C. Mehta v. Union of India*¹⁰⁵ by the writ petitions filled against the Shri Ram Foods and Fertilizers following a leakage of Oleum gas from one of its factories. Here, Bhagwati, C.J., speaking for himself, Rangnath Mishra, G.L. Oza, M.M. Dutt and K.N. Singh, J.J. had almost held Shriram Food and Fertilizer Industry to be 'State' under Article 12 but restrained himself from making such an express declaration when he said "... we do not propose to decide finally at the present stage whether a private corporation like Shriram would fall within the scope and ambit of Article 12, because we have not had sufficient time to consider and reflect on this question in depth".¹⁰⁶ Here the writ petition under Article 32 necessitated the primary decision whether Shriram is 'State' for the purpose of Article 12 and the fundamental right to life is available against it or not, but the Court could not spare sufficient time for this, primary issue, whereas relatively complex issues i.e. award and determination of compensation under Article 32 and Absolute liability principles were addressed in minute details. The Court after discussing all precedents relating to 'the State' tried to apply the principles evolved in those precedents to the present case and found that it is prima facie arguable that -

When the state's power as economic agent, economic entrepreneur and allocator of economic benefits is subject to the limitations of the fundamental rights,¹⁰⁷ why would a private corporation under the functional

102. *Workmen of the FCI v. FCI*, (1985) 2 SCC 13.

103. *Mahabir Auto Stores v. Indian Oil Corporation*, AIR 1990 SC 1031.

104. *B.S. Minahas v. Indian Statistical Institute*, AIR 1984 SC 363; *P.K. Ramchandra Iyer v. Union of India*, AIR 1984 SC 541; *Sheela Barse v. Sreetary, Children Aid Society*, AIR 1987 SC 656.

105. AIR 1987 SC 1086.

106. *Id.* 1098.

107. *Vide Erusian Equipment and Chemicals Ltd. v. State of West Bengal*, AIR 1975 SC 266; *Rashbehari Panda v. State*, AIR 1969 SC 108; *Ramanna Shetty v. International Airport Authority*, AIR 1979 SC 1628 and *Kasturilal Reddy v. State of Jammu & Kashmir*, AIR 1980 SC 192.

control of the State engaged in an activity which is hazardous to the health and safety of the community and is imbued with Public interest and which the state ultimately proposes to exclusively run under its industrial policy, not be subject to the limitation.¹⁰⁸

But, the question raised in the above mentioned argument was not replied by the Court. After justifying the proposition that private enterprises do have social responsibilities at par with the State in the matter of protection of human rights the Honb'le Court deferred the decision relating to the main question of 'the State' on the pretext of lack of sufficient time. "The Court, it seems, lacked mental courage and preparedness. The Court left it for a detailed consideration at a later stage if it becomes necessary to do so; although it was obviously necessary, appropriate and opportune to settle the controversy finally."¹⁰⁹ Otherwise, "what is the necessity for painstaking exposition of the law relating to "State" and "human rights"? Moreover, it is respectfully submitted that by not answering the main question here the learned judge has side-stepped the issue".¹¹⁰

Article 32 of the Constitution guarantees the right to take proceedings by original petition straight to the Supreme Court for the enforcement of the fundamental rights conferred by Part - III of the Constitution. The Supreme Court has power to issue directions, orders or writs for the enforcement of any of the fundamental rights. The importance of right to move the Supreme Court has been described by Gajendragadkar, J. in the following words¹¹¹ -

The fundamental right to move this Court can, therefore, be appropriately described as the cornerstone of the democratic edifice raised by the Constitution. That is why it is natural that this Court should, in the words of Patanjali Sastri, J. regard itself 'as the protector and guarantor of fundamental rights' and should declare that it cannot, consistently with the responsibility laid upon it, refuse to entertain applications seeking protection against infringements of such rights.¹¹² In discharging the duties assigned to it, this Court has to play the role of a 'sentinel on the *qui vive*',¹¹³ and it must

108. *Supra* note 105 at 1097.

109. D.C. Jain, "Case analysis of - *M.C. Mehta & Another v. Union of India*, AIR 1987 SC 1086, *AIR Jour.* 52 (1988).

110. A. Lakshminath, "Dynamics of Article 12" *AIR Jour.* 17 (1989).

111. *Prem Chand Garg v. Excise Commissioner U.P.*, AIR 1963 SC 996, 999.

112. *Vide Ramesh Thapar v. State of Madras*, AIR 1950 SC 124, 126.

113. *Vide State of Madras v. V.G. Row*, AIR 1952 SC 196, 199.

always regard it as its solemn duty to protect the said fundamental rights 'zealously and vigilantly'.¹¹⁴

Bhagwati, C.J. has explained the scope and ambit of Article 32 in following words -

... Court under Article 32(1) is free to devise any procedure appropriate for the particular purpose of the proceeding, namely, enforcement of a fundamental right and under Article 32(2) the Court has the implicit power to issue whatever direction order or writ is necessary in a given case, including all incidental or ancillary power necessary to secure enforcement of the fundamental right. The power of the Court is not only injunctive in ambit, that is, preventing the infringement of a fundamental right, but it is also remedial in scope and provides relief against a breach of the fundamental right already committed.... Article 32 is not powerless to assist a person when he finds that his fundamental right has been violated. He can in that event seek remedial assistance under Article 32. The power of the Court to grant such remedial relief may include the power to award compensation in appropriate cases".¹¹⁵

Similar, rather much wider powers have been conferred on the High Courts under Article 226 of the Constitution. It enables all the High Courts to issue to any person or authority, including in appropriate cases any Government, orders or writs for the enforcement of rights conferred by part - III of the Constitution and for any other purpose. Therefore, the High Court can issue order or writs even for enforcement of any other legal right and its powers are not confined only to the fundamental rights. It may be noted that the Supreme Court as well as High Courts have powers to issue writs, including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*.

In *Consumer Education & Research Centre v. Union of India*,¹¹⁶ after discussing relevant case laws the Court concluded -

[I]n appropriate case, the Court would give appropriate directions to the employer, be it the State or its undertaking or private employer to make the right to life meaningful; to prevent pollution of work place; protection of the environment; protection of the health of the workman or to preserve free and unpolluted water for the safety and health of the people. The

114. *Daryao v. State of U.P.*, AIR 1961 SC 1457, 1461.

115. *Supra* note 105 at 1091.

116. AIR 1995 SC 922.

authorities or even private persons or industry are bound by the directions issued by this Court under Article 32 and Article 142 of the Constitution.

2.8. Legislative Competence and Environment :

Legislative powers in the Constitution of India, are divided between the Centre and the States. This division is in respect of both the territory as well as the topics of legislation Article 245 defines the extent of laws made by Parliament and by the Legislatures of States. Clause (1) of the Article provides that subject to the provision of the Constitution of India, Parliament may make laws for the whole or any part of the territory of India. Whereas, the State legislature may make laws for the whole or any part of the State. Clause (2) of the Article declares that any law passed by Parliament shall not be deemed to be invalid on the ground that it has extra-territorial operation.

In *A.H. Wadia v. Income-tax Commissioner, Bombay*,¹¹⁷ the Supreme Court referred some English cases¹¹⁸ and held -

In the case of a sovereign legislature question of extra-territoriality of any enactment can never be raised in the Municipal Courts as a ground for challenging its validity. The legislation may offend the rules of international law, may not be recognised by foreign Courts, or there may be practical difficulties in enforcing them but these are questions of policy with which the domestic tribunals are not concerned.

The Supreme Court has, however, clarified that the sovereign power of Parliament to make laws with extra-territorial operation must respect the sovereignty of other States also and therefore provision for the law must be found within India itself. Such a law may have extra-territorial operation in order to subserve the object and that object must be related to something in India.¹¹⁹ While the power in Article 245 is confined only to the territorial distribution of law making power of the Union and the States Article 246 and some other provisions in the Constitution are concerned with the distribution of subject-matters with respect to which the power can be exercised.

The scheme for the distribution of legislative power between Union and State

117. AIR 1949 FC 18, at 25 96.

118. *Ashbusy v Ellis* 1893 AC 339, and *Froft v Dunphy*, 1933 AC 156.

119. *Electrotic Corpn. of India Ltd. v. C.I.T.*, AIR 1989 SC 1707.

adopted under the Indian Constitution is like the one which was followed in the Government of India Act, 1935. Article 246 declares that Parliament has exclusive power to make laws with respect to any of the matter enumerated in list-I i.e. the "Union List" in the Seventh Schedule of the Constitution; 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 i.e. the "State List". Both, Parliament and State legislature of any State have power to make laws with respect to any of the matter enumerated in list-III i.e. the "Concurrent List". The various matters of legislation have been enumerated in these three lists. The Union List provides 97 items over which Parliament has exclusive powers of legislation. The State List enumerates 66 items for the State Legislatures to exercise their exclusive legislative power. The powers with regard to the 47 items of Concurrent List are to be exercised by both, the Union and the State Legislature, but any Union law can override the State law in the event of the conflict between the two or a matter enumerated in the Concurrent List. These lists do not exhaust all the legislative subjects, therefore, the Union List, entry 97 read with Article 246(1) lays down that Parliament has exclusive power to make laws with respect to any subject not enumerated in State List or Concurrent List. Besides this, Article 248 also assigns residuary legislative powers to the Parliament of India. "Subject to certain exceptions contained in Articles 249 to 253, to the extent to which either legislature encroaches upon the exclusive sphere of the other as demarcated in the three lists, its legislation will be ultra vires".¹²⁰

Some of the entries of the Seventh Schedule, which are directly or indirectly related the environmental matters, may be enumerated as follows -

Union List : Atomic energy and mineral resources;¹²¹ Shipping and navigation;¹²² Marine shipping and navigation;¹²³ Industries;¹²⁴ Regulation and development of oil fields and mineral oil resources;¹²⁵ Regulation of mines and mineral development;¹²⁶

120. *Supra* note 15 at 650.

121. Entry 6.

122. Entry 24.

123. Entry 25.

124. Entry 52.

125. Entry 53.

126. Entry 54.

Regulation and development of inter-state river and river valleys;¹²⁷ Fishing and fisheries.¹²⁸

State List : Public health and sanitation;¹²⁹ Agriculture;¹³⁰ Preservation protection and improvement of stock and prevention of animal disease;¹³¹ Water, water supplies, irrigation and canal, drainage and embankments;¹³² Fisheries;¹³³ Regulation of mines and mineral development;¹³⁴ Industries;¹³⁵ Gas and gas-works.¹³⁶

Concurrent List : Prevention of cruelty to animals;¹³⁷ Forest;¹³⁸ Protection of wild animals and birds;¹³⁹ Population control;¹⁴⁰ Prevention of infectious or contagious disease or pests affecting men, animals or plants.¹⁴¹

Thus it is evident that the key components of ecology have been well taken care of and this is joint liability of Centre and States to protect environment through legislation. 'Forests', 'wild animals and birds' fall under concurrent list but in practice most of the laws have been passed by the Parliament.¹⁴²

The Constitutional scheme recognises the right of both Parliament and the State Legislatures to make laws with respect to the subjects enumerated in the Concurrent List. Article 254(1) enacts further that if any law made by the State legislatures is repugnant to a law made by Parliament, the law made by Parliament shall prevail and the law made by the legislature of the State shall to the extent of repugnancy, be void. However, clause (2) of Article 254 has provided an exception to this rule. Where a law

127. Entry 56.

128. Entry 57.

129. Entry 6.

130. Entry 14.

131. Entry 15.

132. Entry 17.

133. Entry 21.

134. Entry 23.

135. Entry 24.

136. Entry 25.

137. Entry 17.

138. *Id.* Entry 17-A.

139. Entry 17-B.

140. Entry 20-A.

141. Entry 29.

142. The Wild Life (Protection) Act, 1972 and the Forest (Conservation) Act, 1980.

passed by the State legislatures with respect to a subject enumerated in the concurrent list contains any provision repugnant to the provision of an earlier law made by the Union Parliament, or an existing law in relation to that matter, the law so made by the State shall prevail in that State if it has been reserved for the consideration of the President of India, and has received his assent.

The scheme of distribution of legislative powers exhibits a strong central bias as it provides for certain circumstances under which the Union Parliament may legislate with respect to a matter in the State List as well. Article 249(1) of the Constitution enacts a procedure by which the Union Parliament can assume power of legislation over a subject in State List if it has become a subject of national interest. However, this is possible only if the Council of States, which may be said to represent the State as units, passes a resolution to that effect by a two-third majority. The power which accrued to the Union Parliament to legislate on a State subject is valid only for the period the resolution of Council of States remains in force. Article 250(1) of the Constitution authorises Parliament to make laws, for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List, while a proclamation of Emergency is in operation. This power to make laws on State subject, however, is subject to restriction under clause (2) of Article 250.

Thus, Articles 249 and 250 empower the Parliament to encroach upon State's subject where a subject assumes national importance and where a proclamation of emergency has been issued by the President, respectively. By virtue of Article 251 of the Constitution, however, in both the circumstances the power of the State Legislature to make laws with respect to subjects falling in State List is not repealed. The State can still make a law on the matters that have been taken over by the Union Parliament in accordance with the provisions of Article 249 or Article 250. But in case of conflict between a Union and a State law, the law made by Union Parliament shall prevail, and the law made by the State shall to the extent of the repugnancy be inoperative, so long as the law made by Parliament continues to have effect.

Parliament may be conferred with power to legislate on a State subject by the States themselves if they agree to do so. Article 252 provides that if two or more States are willing that on any particular matter in the State list there should be a

uniform law, which would be applicable in those States, the States can invoke the aid of Parliament to make such a law for them. A resolution to this effect passed by all the Houses of the Legislatures of willing States is necessary to make the exercise of Parliament in this regard lawful. The Act so passed shall be applicable in the first instance, only to the consulting States. However, any other State having desire to adopt that Act may do so by passing a resolution subsequently. "The effect of passing a resolution under Article 252(1) is that Parliament which has no power to legislate with respect to the matter which is the subject-matter of the resolution and such matter is placed entirely in the hands of Parliament and Parliament alone can legislate with respect to it".¹⁴³ Thus, Article 252(1) enables Parliament to make a uniform law for two or more than two States who have consented for it. Clause (2) of Article 252 provides that law passed in the manner stipulated under clause (1) may be amended or repealed by an Act of Parliament passed or adopted in the like manner. Therefore, such laws cannot be amended or repealed by the legislature of the State or States who passed the resolution. Article 252 has been instrumental in passing some landmark environmental legislation like the Wild Life (Protection) Act, 1972 and the Water (Prevention and Control of Pollution) Act, 1974.

Article 253 of the Constitution is another provision which has been used for passing environmental legislations. "This article is intended to make it clear that the power to enter into treaties conferred on Parliament, carries with it, as incidental thereto, a power to invade the State List to enable the Union to implement the treaty. Thus a law passed by Parliament to give effect to an international convention shall not be invalidated on the ground that it contained provision relating to the State subject".¹⁴⁴ This Article declares that 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. Therefore, if a treaty, agreement or convention with a foreign State is connected with a subject which falls in the State List, the Parliament has power to make laws in order to implement the treaty, agreement or convention or any decision made at any international conference, association or other

143. *Supra* note 15 at 672.

144. *Id.* at 673.

body. The Parliament has passed The Air (Prevention and Control of Pollution) Act, 1981 and The Environment (Protection) Act, 1986 by using this provision.

2.9. Role of Panchayats and Municipalities :

The Constitution (Seventy Third Amendment) Act, 1992 and the Constitution (Seventy Fourth Amendment) Act, 1992 have given a Constitutional status to the Panchayats and the Municipalities respectively. These amendments have virtually created three tier of Government in our Constitutional framework. There was a need felt since a long time for establishment of Constitutional norms so that some uniformity and respectability to the system of local self Government could be provided. Even now Panchayats and Municipalities will be dependent to a great extent on the State Governments but they have some legally enforceable rights and obligations which cannot be ignored beyond a limit. Article 243-B provides for the establishment of Panchayats in every State at the three levels i.e. village, intermediate and district levels. Article 243-G authorises the legislature of a State to endow the Panchayats with such powers and authority as may be necessary to enable them to function as institution of self-government, by appropriate law with respect to -

- (a) the preparation of plans for economic development and social justice;
- (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

The Eleventh Schedule along with other matters contains following matters which are directly or indirectly related to environment like, agriculture;¹⁴⁵ soil conservation;¹⁴⁶ water management and watershed development;¹⁴⁷ fisheries;¹⁴⁸ social forestry and farm forestry;¹⁴⁹ minor forest produce;¹⁵⁰ drinking water;¹⁵¹ health and sanitation;¹⁵² and maintenance of community assets.¹⁵³

145. Entry 1.

146. Entry 2.

147. Entry 3.

148. Entry 5.

149. Entry 6.

150. Entry 7.

151. Entry 11.

152. Entry 23.

153. Entry 29.

Municipalities of three types can be constituted according to Article 243-Q of the Constitution i.e. Nagar Panchayat, an area in transition from a rural area to an urban area; Municipal Council for a smaller urban area; and a Municipal Corporation for a larger urban area. Article 243-W provides that the legislature of a State may, by law, endow the Municipalities with necessary powers and authority to enable them to function as institution of self government. Such law may contain provisions for the devolution of powers and responsibilities upon Municipalities with respect to the preparation of plans for economic development and social justice; the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule. The Wards Committees may also be endowed with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

The matters which are related to environment in the Twelfth Schedule may be enumerated as follows -

Urban planning including town planning;¹⁵⁴ regulation of land use;¹⁵⁵ water supply;¹⁵⁶ public health, sanitation, conservancy and solid waste management;¹⁵⁷ urban forestry, protection of the environment and promotion of ecological aspects;¹⁵⁸ provision of urban amenities such as parks, grounds;¹⁵⁹ cremation grounds and electric crematoriums;¹⁶⁰ prevention of cruelty to animals;¹⁶¹ regulation slaughter houses and tanneries.¹⁶²

Thus it is evident that the Constitution imposes the duty to protect and preserve the environment on all the three tiers of the Government i.e. Central, State and Local.

154. Entry 1.

155. Entry 2.

156. Entry 5.

157. Entry 6.

158. Entry 8.

159. Entry 12.

160. Entry 14.

161. Entry 15.

162. Entry 18.

2.10. Management of Environment in Tribal Areas :

Article 244(2) of the Constitution declares that the provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram. Paragraph 1 of sixth schedule provides for Autonomous districts and autonomous regions. Paragraph 2 of the Schedule makes provision for a District Council for each autonomous district and a separate Regional Council for each area constituted as autonomous region under the Schedule. Paragraph 3 of the sixth schedule gives powers to the District Councils and Regional Councils to make laws. According to paragraph 3(1) the Regional Council for an autonomous region in respect of all areas within such region and the District Council for an autonomous district in respect of all areas within the district except those which are under the authority of Regional Councils, if any, within the district shall have power to make laws. Such power is available on following subjects relating to the environment along with other subjects -

- (i) the management of any forest not being a reserved forest,¹⁶³
- (ii) the use of any canal or water-course for the purpose of agriculture,¹⁶⁴
- (iii) the regulation of the practice of jhum or other forms of shifting cultivation;¹⁶⁵
- (iv) the matter relating to public health and sanitation.¹⁶⁶

All laws made under paragraph 3 of the Schedule is required to be submitted forth with to the Governor and, until assented to by him, shall have no effect.¹⁶⁷

Paragraph 3-A of the sixth schedule gives additional powers to the North Cachar Hills Autonomous Council and the Karbi Anglong Autonomous Council to make laws within the respective districts. This additional power to make laws included power to make laws with respect to -

- (i) industries, subject to the provisions of entries 7 and 52 of the List - I of the

163. Para 3(1)(b).

164. Para 3(1)(c).

165. Para 3(1)(d).

166. Para 3(1)(f).

167. Para 3(3).

Seventh Schedule;¹⁶⁸

- (ii) preservation, protection and improvement of stock and prevention of animal, diseases; veterinary training and practice; cattle pounds;¹⁶⁹
- (iii) agriculture including agricultural education research;¹⁷⁰
- (iv) fisheries;¹⁷¹
- (v) water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to provision of entry 56 of list-I of the Seventh Schedule;¹⁷²
- (vi) public health and sanitation.¹⁷³

Thus, the Constitution gives special attention for managing the environment in the aforesaid States. These States are rich in natural resources and therefore, may be looked into from the commercial view point by the outsider in the exploitation of the precious natural resources.

168. Para 3A(a).

169. Para 3A(c).

170. Para 3A(e).

171. Para 3A(f).

172. Para 3A(g).

173. Para 3A(r).