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Constitutional Dimensions of Environmental Justice Administration in India: An Analysis

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ABSTRACT: The environmental protection laws and the Constitution of India have developed significantly over the decades as per national and international needs. As the need of the protection and preservation of the environment has been a gradual process, the constitutional frameworks in relation of environmental protection also shaped through a series of amendments, judicial interpretations, and policy initiatives in light of international as well as national developments. The primary objective of providing a constitutional mandate for environmental protection was to ensure the preservation of natural resources and ecological balance, with time which had become an issue of serious concern. Although notions of environmental preservation can be traced back to ancient Indian traditions but constitutional and legal measures gained prominence only in the latter half of the twentieth century but came in full-swing after Stockholm Conference which took place in 1972 and two key provisions Article 48A in part IV and Article 51A(g) in Part IV ‘A’ were incorporated in the Constitution by the 42nd Amendment Act ,1976 where the Indian Constitution obligates the “State through DPSPs” as well as “Citizens through FDs” to “Protect and Promote” the environment. This constitutional recognition elevated environmental protection from a mere policy concern to a fundamental constitutional duty, forming the basis of modern environmental jurisprudence in India. In this scenario this paper attempts to critically examine the administration of environmental justice under the Constitution of India, emphasizing its evolution through constitutional amendments particularly the 42nd Amendment and judicial transformative interpretation of various Articles of the constitution highlighting the role and responsibilities of the State, citizens, and judiciary in safeguarding the environment.

KEYWORDS: Constitution, Fundamental Rights (FRs), Directive Principles of State Policy (DPSPs), Fundamental Duties (FDs), Environmental Justice, Citizens.

1. INTRODUCTION: The scope and ambit of the administration of environmental justice in any nation are determined by the nature and effectiveness of its environmental legal system. In India the environmental protection laws have evolved significantly over the years as per national and international

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needs. In India, the environmental legal system is rooted in multiple sources—international conventions, constitutional provisions, statutory enactments, rules and regulations, and policy measures adopted by the government. Collectively, these instruments form the legal foundation for environmental governance. The administration of environmental justice in India reflects a synergistic relationship between legislative texts, administrative decisions, and judicial pronouncements which derives its legitimacy and authority from these foundational constitutional principles and making it a distinctive model of environmental governance in the developing world.

India had a rich tradition of environmental protection. Our ancient scriptures like the Vedas, the Upanishads, the Smritis and the Puranas provided various principles for protection and conservation of environment. Kautilya's Arthashastra also provided several rules for safeguarding and up gradating of the environment. During the period of British rule a number of laws were enacted which provided for environmental protection. But these early legislative efforts were just a piecemeal and grossly inadequate.⁴ In 1947 India got freedom and the Indian Constitution came into enforcement provided the conceptual and normative basis for the development of environmental justice through the Preamble, Fundamental Rights (hereafter FRs), Directive Principles of State Policy (hereafter DPSPs), and Fundamental Duties (hereafter FDs) which together establish a holistic constitutional philosophy for environmental protection in India. But the Indian Constitution at the time of enforcement had no clear provisions regarding protection of environment.

The true journey of modern environmental jurisprudence in India started after the Stockholm Convention, 1972 and some significant explicit provisions relating to environment were introduced into our Constitution through 42nd Amendment Act, 1976.⁵ Besides a number of environmental legislations were also passed after this convention for the protection and conservation of the environment. The development of environmental legal system in India gained unprecedented momentum after the Bhopal Gas Tragedy and several policies and regulations in relation of environment were formulated. Further the role of Indian judiciary has also helped to spread this movement of saving and developing in the best environmental justice in India. In this scenario this paper attempts to critically examine the administration of environmental justice under the Constitution of India and judicial transformative interpretation particularly of Article 14, 19, Article 21 and other parts highlighting the role and responsibilities of the State, citizens, and judiciary in safeguarding the environment. It also discusses and assesses the influence of global environmental movements such as the Stockholm Conference on India's legal framework to understand how effectively the Indian Constitution supports the environmental concerns.

2. FUNDAMENTAL RIGHTS & THE ENVIRONMENTAL JUSTICE

The judicial creativity of Indian Courts including Apex and Higher of different states has been instrumental in integrating several rights including the right to healthy environment into the fundamental rights, through its interpretative process. In a case of *Ajay Hasia v. Khalid Mujib*,⁶ Hon'ble Justice Bhagwati stated that "it must be remembered that the fundamental rights are constitutional guarantees given to the people of India and are not merely paper hopes or fleeting promises and so long as they find a place in the Constitution, they should not be allowed to be emasculated in their application by a narrow and constricted judicial interpretation." Some of the important fundamental rights under Part III of our Constitution, which have a bearing on the development of administration of environmental justice in India, are analyzed below-

⁴ Furqan Ahmad, Origin and Growth of Environmental Law in India, 43 JILI 359 (2001).

⁵ Sarathe Chandran, Human Rights and Environment Protection, CULR 31 (2002).

⁶ AIR 1981 SC 487.

2.1. **Environmental Justice under Article 14 of the Constitution:** The idea of equality and the responsibilities and rights that citizens and the government have with regard to the environment form the foundation of the constitutional approach to environmental justice administration. The equitable distribution of environmental advantages and responsibilities among the many members of society ought to be managed according to the equality principle. As a result, the equality principle serves as a standard by which the constitutionality concept is applied to laws and administrative procedures. Furthermore, an environmental issue is not an exception. Therefore in India the administration of environmental justice in India emphasizes on establishing administrative and legislative initiatives that are built on the equality principle of Article 14 of the Constitution. This principle incorporates two facets of the right to equality i.e. 'Equality before law' which has negative overtones as conceptualized by A.V. Dicey⁷ forming the foundation of rule of law in India and 'Equal protection of laws' which is positive implying equality of treatment to those who are equal. In the framework of Article 14, environmental justice also addresses the good and bad parts of the equality principle. The administration of environmental justice seeks to abolish unfairness and injustice in the establishment and execution of laws regarding the environment in society is the purpose of the administration of environmental justice. It should strive for a fair distribution of the advantages and costs associated with the environment among the various social strata. Further in order to ensure equitable distribution different social classes must be recognized, as per guarantee of the equality rule the 'equality among equals.' The gist of this principle is that not uniformity treatment to all in all respects, but for equals the law should be equal rather than equal treatment in those respects in which they are unequal. In a nutshell alike must be treated alike, not unequal alike. Therefore, the foundation principle of Environmental Justice is that there should be equitable distribution of environmental benefits and burdens for all. Corresponding to the fundamental right of equality as given in Article 14 of the Constitution, the equitable distribution element of environmental justice can be analyzed on the basis of equality in distribution of environmental benefits and equality in distribution of environmental burdens.

What does Article 14 and Equitable Distribution of Environmental Benefits aim at:

The basis of all environmental problems is the over exploitation and misuse of environmental benefits. Environmental benefits like clean air, safe water, healthy environmental surroundings, rich ecological environment, natural resources etc. are essential to lead a healthy life with dignity. These environmental benefits should not be overpowered by some privileged groups in a nation which is expressly pledged to guarantee social, economic and political justice to its people. Hence it is the paramount duty of the government to devise and implement laws and policies to achieve equitable distribution of environmental benefits. Equitable distribution of environmental benefits may be eco centric or anthropocentric. Eco- centric approach is based on the presumption of fundamental equality between humans and non-humans. Anthropocentric approach is confined to the equitable distribution of environmental benefits among humans. Article 14 forbids class legislation although it does not deny reasonable classification for the purposes of law. Two conditions have to be satisfied in order to verify the validity of a legislative classification. The first one is that the classification must be based on an intelligible differentia and the second condition is that should be a reasonable relationship to the object which intended to be achieved by the law in question. Through reasonable classification and protective discrimination, the object of social justice can be achieved. To attain environmental justice the principle could potentially be adapted to achieve environmental justice. For example, certain groups of vulnerable people as socially and economically backward classes, disabled persons, women, children, and tribal may have special environmental laws or policies to protect their environmental rights. When we analyse

⁷ Equality before the law or the equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts", A.V.DICEY, The Law of the Constitution 198 (8th ed.).

the position of tribal, we can find that their livelihood is dependent on the natural resources collected from the forest.⁸ Their life in consonance with nature also helped to protect and conserve the forest. But available environmental laws and their discriminatory implementation are not able to ensure the security of tribal hence resulting into a failure of strong bond between tribal rights and the forest and their livelihood because of the indiscriminate applicability of these forest laws and policies. Hence it would be in the interest of environmental justice to make special protective provisions to make a balance of interests for tribal so that their right to collect natural resources from the forest is protected without compromising the protection of forests. The need of this balancing of interests is to make requires a legal framework which could cover the interests of all others affected parties.

The goal of Environmental Justice is to make the environmental legal system in such a manner to accommodate the interests of various affected parties that takes into account the interests of all parties involved for environmental problems. When we analyse the position of children, we can find that there is, generally, no special provisions dealing with the protection of their environmental rights while being the foundation of the future of any nation require special treatment. For example, to safeguard children into the environmental policies environmental rights of children must be incorporated. Similar protective provisions may also be safeguarded by protection of the environmental rights of women, persons that have disabilities and others who are socially and economically disadvantaged. In *State of Karnataka v Appa Balu Ingale*,⁹ the Supreme Court vehemently condemned the practice of un-touchability, where access to drinking water- which is an important aspect of the right to environment and the right to life, is denied to Dalits. The court held that the practice is violative of the right to equality. The Hon'ble Supreme Court further observed that 'the egalitarian spirit of the Constitution charged the state to improve the quality of life of Dalits and to make right to life under Article 21, meaningful for them'. Hence the application of equitable distribution of environmental benefits with protective discrimination under Article 14 of the Constitution can contribute towards the achievement of environmental justice in India. In *Maneka Gandhi v. Union of India*,¹⁰ Justice Bhagwati laid down the principle of reasonableness in Article 14 by stating, "Article 14 strikes arbitrariness in state action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness, pervades Article 14 like a brooding omnipresence". Arbitrariness, being opposed to reasonableness is an antithesis to rule of law and violative of Article 14 of the constitution. Any Legislative or Administrative action which failed to satisfy the test of arbitrariness under article 14 can be invalidated by the court. The test of arbitrariness is also applicable to environmental actions of state. In Natural Resources Allocation, re, special reference no.1 of 2012, the court decided that reasonableness and rationality in the disposal of natural resources must be observed.¹¹ Equitable distribution of environmental burdens doesn't mean that the burdens should be shared by all. The crux of the principle lies in the sharing of burden by the persons who have caused the same and to protect the innocent ones. But in reality, it is not possible to confine the harms to the causers due to the peculiar nature of environmental issues. For example, the evil of pollution falls upon the whole community irrespective of their individual role in causing the same. In many cases we can find that the impact of pollution is more on the poor and ordinary people who lack the resources and the means to avoid it. Another example is industries which cause pollution. The burden of pollution is borne by the ordinary man. Normally in any society all the responsibility dumped on the poor and ordinary people regarding debris of environmental problems like pollution, waste, unhygienic living conditions, climate change or unhealthy surroundings. While the object behind establishment of environmental justice is to remove all type of disparity equality provision of the Constitution. The aim of proper administration of Environmental Justice is to stop and control the disproportionate sharing of

⁸ Dr.N.K.Chakrabarti, Right to Livelihood and Environmental Protection, 23(3&4) IBR 57 (1996).

⁹ AIR 1993 SC 1126.

¹⁰ (1978) 1 SCC 248.

¹¹ (2012) 10 SCC 1.

environmental harms and to protect the weaker sections of society from the harmful effects of environmental problems which may be not only the tribal but also the women and children. It can be achieved by formulating environmental laws and policies in conformity with right to equality provided U/Art. 14, to protect disproportionately harmed persons. The environmental legal system must be eased in order to comprehend the cost of environmental damages at their source through economic and enforcement approaches.

2.2- Article 21 of the Constitution & the Environmental Justice

In any part of any society, it is sine qua non for the effective administration of Environmental Justice to recognize the right to healthy environment. The supreme law that is Indian Constitution makes no explicit mention of rights to healthy environment as a fundamental right under Part III. The right to a healthy environment is closely linked to the ‘right to life’: without environment no life is possible.¹² Hence during some last decades the judiciary has played a very good role and has actively worked in this direction and has established right to healthy environment as a part and parcel of Right to live and liberty U/Art. 21¹³ through several judgements.¹⁴ Let’s take a short look of some of them-

In *Chetriya Pradushan Mukti Sangarsh Samithi v State of U.P.*¹⁵ the Chief Justice Sabyasachi Mukerji observed “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”. In another landmark case¹⁶ Justice K.N. Singh and Justice N.D. Ojha extended the meaning of the right to enjoyment of life to encompass enjoyment of pollution free air and water within the ambit of Article 21 of the Constitution and stated that ‘Environment is one of the facets of the right to life guaranteed under Article 21 of the Constitution therefore it is a matter directly under the Constitution and if the Court perceives any project or activity as harmful or injurious to the environment it would feel obliged to step in’.¹⁷ Several facets of the environmental rights have also have been acknowledged as integral to the essential requirements of the right to life provided U/Art. 21.¹⁸

Over the years, the Apex Court of India has given wide interpretation of Article 21 and formed the cornerstone of environmental jurisprudence in India.¹⁹ In *M. C. Mehta v Union of India*²⁰ the Apex Court of India implicitly recognized the right to live in pollution free environment as an integral part of the fundamental right to life guaranteed U/Art. 21. Through its progressive and purposive interpretation, the judiciary laid the foundation of environmental justice in India by expanding the ambit of the right to life is not a mere animal existence but include to live with human dignity and to live in a clean and healthy environment.²¹ Further in *Social Jurist, A Lawyers Group v. Government of NCT of Delhi*,²² the

¹² Sairam Bhat, *Natural Resources Conservation Law* 41 (1ST Ed. 2010), See Also Dr.G.Indira Priya Darsini & Prof.K.Uma Devi, *Environmental Law and Sustainable Development* 271 (1ST Ed. 2010).

¹³ Article 21 of the Indian Constitution – “No person shall be deprived of his life or personal liberty except according to procedure established by law”.

¹⁴ Article 21 of the Indian Constitution – “No person shall be deprived of his life or personal liberty except according to procedure established by law”.

¹⁵ AIR 1990 SC 2060.

¹⁶ *Subhash Kumar v State of Bihar*, AIR 1991 SC 424.

¹⁷ *Construction of Park at Noida Near Okhla Bird Sanctuary Anand Arya v Union Of India*, 2010(13) SCALE 50 at Para 66.

¹⁸ In *Reliance Energy Ltd v Maharashtra State Road Transport Corporation Ltd* (2008) 8 SCC 1, the Hon’ble Supreme Court held that Article 21 and 14 are the heart of the chapter on fundamental Rights. They cover various aspects of life.

¹⁹ In *Reliance Energy Ltd v Maharashtra State Road Transport Corporation Ltd* (2008) 8 SCC 1, the Hon’ble Supreme Court held that Article 21 and 14 are the heart of the chapter on fundamental Rights. They cover various aspects of life.

²⁰ AIR 1987 SC 1086.

²¹ *Francis Coralie v. Union Territory of Delhi*²⁰, Justice P.N. Bhagawati pronounced “we think that the right to life includes the right to live with human dignity and all that goes along with it”.

²² 140(2007) DLT 698 , CDJ 2007 DHC 1684,

Delhi H.C. stated that the constitutional mandate to ensure the dignity of the individual is given in the Preamble of the Constitution. The right to live with dignity necessarily encompasses the within its ambit legitimate expectation of the citizens to enjoy a clean environment and access to adequate healthcare. Consequently, it becomes the duty of the government to fulfill the legitimate expectation of the people by ensuring a healthy environment and safeguarding public health.

In *Virender Gaur v State of Haryana*,²³ Hon'ble Justice K. Ramaswamy held "Article 21 protects the right to life as a fundamental right. Environmental, ecological, air, water- pollution, etc. should be regarded as tantamount to violation of Article 21. Therefore, hygienic environment is an integral facet of the right to healthy life and it would be impossible to live with human dignity without a humane and healthy environment". The right to live with human dignity is not based on the social and economic status of a person. So, the poor and disadvantaged sections of the society are entitled to a human and healthy environment to protect their right to live with human dignity. The elements of environmental justice provide a first step towards upholding their right to a healthy environment while overlooking their social and economic disadvantages. In several decisions our judiciary have borrowed the implied rights under Article 21 of the Constitution to breath air into the, otherwise non justifiable, DPSPs and FDs pertaining to environmental protection. In *Charan Lal Sahu v Union of India*²⁴ the Hon'ble Supreme Court held that the right to life, liberty, pollution free air and water is guaranteed by the Constitution under Articles 21, 48A and 51A(g) as national dimensions of human rights. It is the responsibility of the state to take effective steps to protect the rights granted by the supreme legislation. Besides the Judicial system of India also played a notable role in providing a constitutional base for the right to environment by interpreting Article 21 of the Constitution. Our apex court had made a substantial contribution to the principle of equality by adopting the American concept of 'due processes by interpreting Article 14 along with Articles 19 and 21.²⁵ It also contributed to the development of environmental justice in India by reading together Articles 14, 19 and 21 to develop a reasonable, fair, and just procedure.

2.3 Environmental Justice under Article 19 of the Constitution

The Indian Constitution guarantees the basic freedoms of citizens U/Art. 19. These freedoms are not ultimate but are subjected to certain reasonable restrictions based on grounds provided U/Art. 19(2) to (6). Articles 19(1) (a) and 19(1)(g) of the Constitution²⁶, are relevant to the administration of environmental justice. Access to environmental information, constitutes an essential aspect of environmental justice and finds its constitutional foundation in Article 19(1) (a), which ensures the right to know as well as the freedom of speech and expression. The division bench of the Supreme Court of India consisting of Hon'ble Justices P B Sawant, Mohan S and Jeevan Reddy B P in *Secy., Ministry of I&B v Cricket Assn. Of Bengal*²⁷ pronounced that Article 19(1) (a) of the Constitution guarantees the freedom of speech and expression, as well as the right to transmit and receive information. The protection of the right to access environmental information is vital for the internalization of environmental laws by the society and effective implementation of the same and also make the citizens enable to participate in the environmental decision-making process actively and effectively as well as to take part actively during the public hearing processes of Assessment of Impacts of Environmental development projects. In *Reliance Petrochemicals Ltd. v Proprietors, Indian Express Newspapers, Bombay (P) Ltd.*²⁸ the Apex Court division bench consisting of Justices. Mukharji and Sabyasachi observed, "We must remember

²³ 1995 (2) SCC 577.

²⁴ AIR 1990 SC 1480.

²⁵ D.T.C. v. D.T.C. Mazdoor Congress (1991) Supp. (1) SCC 600 (paras 295-297).

²⁶ Deal with the freedom of speech and expression and freedom to practice any profession, or to carry on any occupation, trade or business respectively

²⁷ (1995) 2 SCC 161.

²⁸ AIR 1989 SC 190.

that the people at large have a right to know in order to be able to take part in a participatory development in the industrial life and democracy". Only an informed person can qualitatively contribute towards an informed environmental decision-making process. Environmental education and creation of environmental awareness enable people to take an active part in environmental issues. It enables them to understand clearly and appreciate the different aspects of environmental challenges in relation to the country's socioeconomic scenario. Environmental Justice can be achieved only by providing adequate environmental information, education and awareness and enabling the public to meaningfully understand and participate in environmental issues within the nation's socio-economic context. In *S.P. Gupta v Union of India*,²⁹ the Hon'ble Justice P.N. Bhagawati observed "This is the new democratic culture of an open society towards which every liberal democracy is moving and our country should be no exception. The concept of an open government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1) (a). Therefore, disclosure of information in regard to the functioning of Government must be the rule and secrecy an exception justified only where the strictest requirement of public interest so demands". After the enactment of The Right to Information Act, 2005, access to information in environmental matters also got new impetus. RTI Act set up an effective framework for promoting transparency and accountability in administrative authorities. But one important difference between environmental information and other types of information is that the impact of the former one is not clearly traceable in the majority of cases. Therefore the affected parties may not be interested in availing the rights under the RTI Act.

Another important Article under Part III of the Constitution which had an impact on Environmental Justice Administration is Article 19(1) (g).³⁰ The right contained in Article 19(1) (g) is subjected to reasonable restrictions by Article 19(6) which empowers state to impose reasonable restrictions in the interests of the common people on their right to profession, trade or business. In *Cooverjee Barucha v Excise Commissioner*,³¹ the Hon'ble Apex Court held that "The right of every citizen to pursue any lawful trade or business is obviously subject to such reasonable conditions as may be deemed by the governing authority of the nation in the interest of safety, health, peace, order and morals of the community necessary. Further with the increasing stringency of environmental regulations and the intensification of their enforcement, challenges by industries to regulatory actions are expected to rise, compelling the judiciary to carefully balance the imperatives of environmental protection with the fundamental right to carry on trade and business under Article 19(1) (g).³² In this balancing process the court should take into account various factors like the nature of the business or occupation, the impact on the environment, the validity of the environmental rules and regulation in the context of Article 19(1) (g) and Article 19(6) of the Constitution. Elements of environmental justice should also be considered by reading together Article 21 and 14 of the Constitution on environmental perspective. In *M/s Ivory Traders and Manufacturers Association v Union of India*,³³ the Hon'ble Supreme Court held that, "any trade which is pernicious to the protection and conservation of the natural environment can be totally banned without attracting Article 19(1) (g) of the Constitution."

3. ENVIRONMENTAL JUSTICE UNDER DIRECTIVE PRINCIPLES OF STATE POLICY

The DPSPs under Part IV of the Constitution contain some vital provisions which represent the socio-economic goals and aspirations of the society. The object of 'Social Justice' enshrined in the

²⁹ 1981 Supp SCC 87.

³⁰ "All citizens shall have the right to practice any profession, or to carry on any occupation, trade or business."

³¹ AIR 1954 SC 220.

³² Shyam Divan and Armin Rosencranz, *Environmental Law and Policy In India* 54 (2ND ED. 2002).

³³ AIR 1997 Del 267.

preamble of our Constitution can be achieved only by giving effect to the cherished ideals of Directive Principles. Social Justice is a dynamic devise designed to alleviate the sufferings of the poor, the weak, dalits, tribals and depraved sections of the society and to empower them to achieve equality and live a life with dignity as provided U/Article 21.³⁴ When the Constitution was enacted in 1950, the Constitution did not have any specific express provisions guaranteeing environmental justice. But following the Stockholm conference in 1972, specific provisions pertaining to the environment are incorporated into the Directive principles of state policy and Fundamental duties through 42nd Constitutional Amendment Act, 1976. In *V. Lakshmiopathy v State of Karnataka*³⁵ the Karnataka High Court observed “Directive principles under Part IV are intended to build the edifice of welfare state. Environment and its preservation is a subject matter of both (DPSPs & FDs), thus emphasizing the importance given to it by our Constitution. Protection of environment is a matter of constitutional priority. Neglect of it is an invitation to disaster”. Article 48A of the Constitution provides, “The State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country.”³⁶ The provisions of Article 48A of the Constitution should be interpreted as part of the forming part of the principles embodied in Article 21. A statute cannot be deemed ultra vires solely on the grounds of Article 48A, provided it does not otherwise violate the guarantees of Articles 14 and 21 of the Constitution.³⁷ In *M.C. Mehta v Union of India*,³⁸ the Supreme Court held “the duty is cast on the state to under Article 47 and 48A in particular of Part IV of the constitution is to be read as conferring a corresponding right on the citizens and therefore, the right under Article 21 at least must be read to include the same within its ambit”. Justice T S Doabia rightly pointed out that “In India the judicial attitude in protecting and improving the environment provides a testimony of the fact that Directive principles are not mere guiding principles of policy but they may have to be given effect to.”³⁹ Even before the Article 48A introduced in the Constitution by 42nd Amendment Act, 1976 the elements of environmental justice can easily be observed under Part IV provisions. For eg. Article 39 (a)⁴⁰ of the Constitution provides that the State shall direct its policy towards securing adequate means of livelihood for all citizens without discrimination. On the basis of Article 39(a), the Supreme Court has interpreted Article 21 to include the right to livelihood within the scope of the right to life. Adequate means of livelihood is a prerequisite for enjoying a healthy environment. It also promotes the protection and the conservation of environment. At the Stockholm conference *Mrs. Indira Gandhi rightly observed, “On the one hand the rich look askance at our continuing poverty. On the other, they warn us against their own methods. We do not wish to impoverish the environment any further and yet we cannot for a moment forget the grim poverty of large numbers of people. Is not poverty and need the greatest polluters?”*⁴¹ Article 39 (b) of the Constitution directs to the State shall, in particular, shall shape its policies to ensure that the ownership and control of the community’s material resources are distributed in a manner that best serves the common good. The expression ‘material resources of the community’ under Article 39(b) has been broadly defined by the Supreme Court to include not only natural resources but also other material resources.⁴² Natural resources of our nations constitute an integral part of Article 39(b) and equitable distribution of environmental benefits and resources can be achieved through the implementation of the same by interpreting it with Article 14 of the Constitution. Natural resources of the community can be utilised in an optimum manner by proper planning and conservation taking into account the interest of

³⁴ Justice T S Doabia, *Environmental and Pollution Laws In India* 465 (2nd ed. 2010).

³⁵ AIR 1992 Kant 57.

³⁶ Introduced by The Constitution (42nd Amendment) Act, 1976.

³⁷ *Bombay Dyeing & Manufacturing Co. Ltd. (3) v Bombay Environmental Action Group* (2006) 3 SCC 434 .

³⁸ (1998) 9 SCC 589.

³⁹ Id.

⁴⁰ Article 39(a) – “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”.

⁴¹ Indira Gandhi, *of Man and His Environment* 10 (1st ed. 1992).

⁴² *Vide State of Karnataka v Ranganatha Reddy* AIR 1978 SC 215.

different groups and future generations of our nation. Prof. MP Jain observed that “a socialistic state secures to its people socio-economic justice. Socialism means distributive justice and this idea is ingrained in Article 39(b) of Part IV of the Constitution.”⁴³ *In Air India Statutory Corporation v United Labour Union*,⁴⁴ the Supreme Court held that Article 39(b) has a social object. The application of the principle underlying Article 39(b) of the Constitution to the distribution of environmental benefits, in conformity with Article 14, provides a framework for the administration of environmental justice in India. It covers under it all material resources of the community and to; distribute equitably. Its purpose is to distribute in the common interest of all. Article 39 (f) of the Constitution stipulates that children should be given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. In pursuance of the directive principles provided under Articles 39(f) and 39(e) a national policy for children was evolved by the government of India, which states that It shall be the policy of the State to provide adequate services to children, both before and after birth and through the period of growth, to ensure their full physical, mental and social development. Hence children need a healthy environment to develop their potential to the full. Ensuring a healthy environment for children’s physical, mental, and social development is the goal of environmental justice in this domain. It is possible to apply the same idea to safeguard the rights of women and other marginalized groups in society. Article 47 of the Constitution mandates that the State shall regard the improvement of nutrition, living standards of its people, and public health among its primary duties and, in particular, the State shall strive to prohibit the consumption of intoxicating drinks and drugs harmful to health, except for medicinal purposes."The objectives of Article 47 can be accomplished only in a healthy environment. Article 39A of the Constitution addresses access to environmental justice and states that the State must ensure that the legal system functions to promote justice based on equal opportunity, free legal aid through suitable legislation or planning or in other ways as well, so that no citizen is denied access justice because of financial restraints and other disabilities. If someone is deprived the state are directed to offer free legal aid to those who deserve it. The concept of distributive justice to the down trodden sections of the society is recognized U/Art. 46. It mandates that the State shall promote the educational, economic reforms of the weaker sections of the society, particularly the SCs and STs, with special care and will safeguard them from all forms of injustices and exploitation in society or more. The economic and educational interests of weaker sections of the people can be protected only in a decent environment. Environmental Justice aims at protecting the interests of the weaker sections of society from environmental exploitations by the affluent few and removing social injustice. Environmental Justice also aims at protecting the economic interests of the people without compromising the protection of environment on the basis of sustainable development. The other branches of government were encouraged to work towards achieving environmental justice by the judicial approach in construing and implementing the DPSPs by combining them with FRs. Preserving the precious principles of our Constitution requires a coordinated and concerted effort from all branches of government.

4. ENIRONMENTAL JUSTICE UNDER FUNDAMENTAL DUTIES

By 42nd Amendment Act, 1976 incorporates the 10 (after 86th Amendment now 11) Fundamental Duties of citizens were inserted in Part IV titled as Part IV ‘A’ of the Constitution of India. Article 51 A (g) provisions “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.” The Indian judiciary, by linking Fundamental Rights under Part III with Fundamental Duties under Part IVA, has given effect to the otherwise non-justiciable duties. In *Abhilash Textile v Rajkot Municipal*

⁴³ M P Jain, Indian Constitution Law 1498 (6th ed. 2010).

⁴⁴ (1997) 9 SCC 377.

*Corporation*⁴⁵, Gujarat High Court, while considering the interrelation between FR under Article 19(1) (g) and FD U/Art. 51A (g), rightly pointed out “the petitioner cannot assert their right, much less fundamental right, to carry on business without any regard to the fundamental duties.” The goal of the FDs is to encourage people to get involved in the reconstruction and development of a welfare society. Only with the enthusiastic involvement of citizens will environmental justice goals be realized. Both the states and the people have an obligation to preserve and maintain our environment. In *T. Damodar Rao v S.O. Municipal Corporation*,⁴⁶ Supreme Court observed “Preservation of the environment and keeping the ecological balance unaffected is a task which not only the government but also every citizen must undertake. It is a social obligation and let every Indian citizen be reminded that it is his fundamental duty enshrined in Article 51A (g) of the Constitution”. Further in *L.K.Koolwal v State of Rajasthan*⁴⁷ the Rajasthan High Court held that, ‘though termed as duty under Article 51A (g) the provision gives citizens a right to approach the court for a direction to the Municipal authorities to clean the city’. Article 51A (g) reminds the citizens of their duty not only to protect the environment but also to improve the environment by different methods as a responsible citizen i.e. they should cooperate with the state machinery actively and positively to fulfill their duty towards the protection and conservation of environment.

5. CONCLUSION: The creation of an Indian legal framework for the administration of environmental justice was aided by international accords such as the Rio and Stockholm conventions. Our constitutional ideas form the foundation of our judicial system. Despite the absence of explicit provisions in the Constitution pertaining to environmental protection and conservation, our judiciary has implicitly recognized these issues through constructive interpretation of the document’s provisions. After the 42nd constitutional amendment specific provisions dealing with environmental protection were incorporated under the Part IV & IV as directing to the State and the fundamental duties to the citizens. In all this the role of Judiciary becomes important to recognize under Article 21 of the Constitution ‘the right to healthy environment’ as a Fundamental Right. The basis for ensuring environmental justice for the populace was established by these constitutional advancements in environmental protection. The only way to accomplish the goals of environmental justice, which include a fair distribution of environmental benefits and costs, is to invoke the constitutional right to a healthy environment within the equality framework guaranteed U/Art. 14. Further Art. 19(1) (a) also plays a decisive role in assuring the meaningful involvement of people in environmental protection and conservation. Reasonable restrictions on the ground of public interest, which also include the protection of environment, on freedom of business, profession and occupation empower the government to juxtapose the interest of powerful industries with those of the ordinary man for proper administration of environmental justice. Environmental principles introduced into the FRs, DPSPs and FDs provided a constitutional basis for environmental jurisprudence of the nation. Judicial attitude in making these provisions a dynamic one by associating it with the justifiable fundamental rights empowered the citizens to fight for environmental justice. These Constitutional provisions also guided the development of environmental laws and policies in India.

⁴⁵ AIR 1988 Guj 57.

⁴⁶ AIR 1987 SC 171.

⁴⁷ AIR 1988 RAJ 2.