

PROTECTION OF ENVIRONMENT:
A CONSTITUTIONAL GOAL

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Abstract

Constitution of India is the supreme law of the nation. It provides various solutions pertaining to the preserve and protects the environment. Environment pollution produces hazardous effect on human being. We are committed nationally and internationally by their various agreement treating and declaration to protect environment. Constitution of India provides various provisions to maintain healthy environment, like fundamental rights, directive principles of State policy, distribution of legislative powers and International agreement. It is duty of every Individual and Judiciary to make efforts to preserve, protect and maintain pollution free environment with the balance between Industrialization and environment.

Key Words: Protection of Environment, Pollution Free Environment Constitutional Goal

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Introduction

The Constitution of India came into force on 26th January, 1950. Originally, the constitution contains no specific provisions for environmental protection. However, certain specific provisions have been incorporated by the Constitution (Forty Second Amendment) Act, 1976 and subsequent amendments. Indian Constitution is one of the rarest constitution which indulges specific relief and provision for the protection of its environment though our leaders at that point of time were very much concerned about our environment that they copulated the constitution as being the fundamental law of the land and has a binding force on citizens, non citizens as well as the State. The Fundamental Rights and the Directive Principles of the State Policy marked our national obligation to protect and preserve the environment. The courts in India also came up with new interpretations to the constitutional provision relating to protection, preserve and improvement of the environment though with all this concern they gave birth to our environmental protection.¹

Meaning

The word “environment” relates to surroundings. It includes virtually anything. Indeed Einstein once remarked: “The environment is everything that is not me”. We can also define “environment” as anything which may be treated as covering the physical surroundings that are common to all of us, including air, space, waters, land, plants and wild life.² The term environment has been derived from the term ‘environ’, which means ‘to surround’, French term ‘environner’, Latin ‘in-viron’. Thus, etymologically environment means ‘surrounding conditions, circumstances affected people’s life.’³ Several attempts has been made by writers, jurists, commentators, legislatures etc. to define it. McGraw – Hill Encyclopedia of Environmental Science defines environment as follows – environment is “the sum total of all conditions and influences that affect the development and life of organisms”. It seems it is quite a comprehensive definition as it ‘stresses in totality’. According to Gilpin, environment “from a scientific point of view is take to mean everything that is physically external to the organism; organisms of course include of human beings”.⁴ Justice P.N. Bhagwati has made the term environment more clear and simpler to understand. He opines that “the term refer to the conditions within and around an organism, which affect the behaviour, growth and development,

or life processes, directly or indirectly. It includes the conditions with which the organism interacts.”⁵

Concept

The environment has been defined as that outer physical and biological system in which man and other organisms live as a whole. It includes of many interacting components. These components are: “its rocks, minerals, soils and waters, its lands and their present and potential vegetation, its animal life and potential for livestock husbandry, and its climates.” There is a close relationship between man and the environment. History is a witness to the fact that the man has been endlessly struggling continuously to manage his environment so as to improve his well being. This capacity of the man increased considerably following the industrial, scientific, and technological revolutions. The spread of diseases such as the insect, rodent, water, and food borne infections which at one time could not be attributed to the main causes of death morbidity has been practically controlled. All this has been done without affecting the natural environment surrounding the man. But as the time passed, new problems started coming to the forefront and resulted in dis-balancing the nature. According to section 2 (c) "environment pollution" means the presence in the environment of any environment pollution.⁶

Today, we are concerned with a different kind of threat to environment by poisonous gases and emissions, industrial effluents, urban sewage, garbage, plastic waste, chemicals, exploitation of natural resources like soil, forests, water supplemented by other equally important factors like poverty, growing population, health hazards, degeneration in quality of life have acquired alarming proportions which cry for a new environmental ethic, order and justice in Indian society.⁷

International Concern

The U.N. Conference on Human Environment and Development at Stockholm in 1972 is considered to be the Magna Carta of environment protection and sustainable development. It was for the first time that the world community got together to deliberate seriously on an important issue of environment protection and sustainable development. ***The Stockholm Declaration (1972) on Human Environment proclaimed that:***

“Man is both ‘creator’ and ‘molder’ of his environment which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long evolution of the human race on this planet a stage has been reached when through

the rapid acceleration on sciences and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man's environment, the natural and the man-made, is essential for his well being and to the enjoyment of basic "human rights", even the right to life itself."⁸

In United Nations Conference on Human Environment, at Stockholm the then Prime Minister of India Mrs. Gandhi while displaying the nations commitment to the protection of environment. said, "The natural resources of the earth, including the air, water, land flora and fauna and especially representative samples of the natural ecosystems, must be safeguard for the benefits of present and future generations through careful planning or management, as appropriate..."⁹ Nature conservation including wildlife must therefore receive importance in planning for economic development".

The report of the World Commission on Environment and Development in 1987 not only provided impetus to sustainable development but also brought into focus the common concerns of the people, common challenges which we face the world over and the common endeavours which we need for peace, security development and environment. Earth Summit of 1992 at Rio de Janeiro, through Rio Declaration and Agenda 21, has further concertized the concept of environment protection and sustainable development ¹⁰

In 1997 the World Climate Conference was held at Kyoto (Japan) where a historic accord was signed by the participating countries for mandatory cuts in emission of green house gases particularly by the industrialized nations to help in saving the planets from global warming. In August-September, 2002, the World Summit on Sustainable Development was held in Johannesburg, South Africa. In this Summit the representatives of the people of the world adopted the Johannesburg Declaration on Sustainable Development and reaffirmed their commitment to sustainable development and to build a human, equitable and caring global society cognizant of the need for human dignity for all. Different Conferences of Parties have regularly insisted on the reduction of Green House gases. The Kyota Protocol has also come into force w.e.f. 16.2.2005. Copenhagen Climate Summit and The Cancun Climate Summit, (Mexico) on Environment as held on the year of 2009 & 2010 respectively.

42nd Constitution Amendment

It was for the first time, that the Constitution (Forty Second Amendment) Act, 1976 incorporated Article 48-A into the Constitution. The provision reads as follows: “The State shall endeavor to protect and improve the environment and to safeguard the forest and wildlife of the country.”¹¹ The Environment (Protection) Act, 1986 and various other laws providing for the protection of environment, forest and wild life are among the steps taken under this article.¹² Conversion of diesel motor vehicles plying in Delhi to CNG was upheld under this provision along with Articles 39(e) and 47¹³ several principles of environmental law have been developed under this article in association with Articles 21 and 51(g).¹⁴ The Amendment also inserted Part VI-A in the constitution enumerating fundamental duties of the citizens under Article 51-A (g) which reads as “It shall be duty of every citizen of India to protect and improve the natural environment including forests, lakes, and wildlife and to have compassion for living creature”. It also inserted entry 17-A in List III just after entry 17 which provided for forest. Similarly, the subject of protection of wild animals and birds was also transferred from List II , entry 20 and incorporated in List III entry 17-B.

The Directive Principles of State Policy

Part IV of the Indian Constitution lays down certain fundamental principles of State Policy. **Article 47** of the Constitution is one of the directive principles of the state policy and it provides that, the state shall regard the raising of the level of the nutrition and standard of living of its people and the improvement of public health as among its primary duties and, in particular the state shall Endeavour about prohibition of the consumption except for medical purposes of intoxicating drinks and drugs which are injurious to health. The improvement of public health will also include the protection without which public health cannot be assured.

In this connection it is worthwhile to point out that in several environmental cases the courts have been guided by the language of Article 48-A. In *Sachidanand Pandey v. State of West Bengal*¹⁵, the Supreme Court , relying upon the Constitutional directives concerning protection of environment observed whenever a problem of ecology is brought before the court , the court is bound to bear in mind Article 48-A and Article 51-A(g). When the court is called upon to give effect to the Directive Principles and the Fundamental Duties , the court is not to shrug its shoulder and say that priorities are a matter of policy and so it is a matter of the policy making authority.

T. Damodhar Rao v. S.O. Municipal Corpn., Hyderabad,¹⁶ the Court pointed out that in view of articles 48-A and 51-A(g), it is clear that protection of environment is not only the duty of citizen but it is also the “obligation” of the State and all other State organs including Courts.¹⁷ In *Kinkri Devi v. State*,¹⁸ the Himachal Pradesh High Court reiterated that in articles 48-A and 51-A(g) 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 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. Otherwise, the court cannot remain a silent spectator. To ensure the attainment of the constitutional goal of the protection and improve of environment, the court can intervene effectively by issuing appropriate writs, orders and directions.

In the case of *Sansar Chand v. State of Rajasthan*,¹⁹ observed that under Article 21, 48A, 51g direction issued by the Supreme Court to central and state governments and their agencies to make all efforts to preserve Indian's wildlife and take stringent action against those violating the provisions of wildlife (Protection) Act, 1972. It is necessary for maintaining ecological balance in India. In *M.C. Mehta v. Union of India*,²⁰ (popularly known as CNG case) the Court observed that Articles 39(e) and 48-A by themselves and collectively cast a duty on the State to secure the health of the people, improve public health and protect and improve the environment.

Fundamental Rights In Relation to Environment

Principle 1 of the Stockholm Declaration finds reflection in articles 14, 19 and 21 of the Constitution of India dealing with the right to equal freedom of expression and right to life and personal liberty respectively.²¹ The provisions of Parts III and IV, dealing with fundamental rights and directive principles respectively, are supplementary and complementary to each other. Fundamental rights are but means to achieve the goal indicated in Part IV and thus, must be construed in the light of the directive principles.²² The right can be recognized as a fundamental right even though not expressly mentioned in Part III. In other words, there are various unremunerated fundamental right in Part III and judicial activism in India has taken a lead in interpreting various unremunerated right in Part III of the Constitution.²³ Environment protection is one of them. Though specific provisions for the

protection of environment are found in the directive principles (Part IV) and fundamental duties (Part IV-A), yet right to live in a healthy environment has been interpreted by the judiciary into various provisions of Part III dealing with fundamental rights. Thus, the judiciary in India has provided impetus to the Human Rights approach for the protection of environment.

Article 21 is the heart of fundamental rights and has received expanded meaning from time to time and there is no justification as to why right to live in a healthy environment, can not be interpreted in it. For healthy exercise and preservation of the essential ingredients of life, stable ecological balance is required. Article 21 guarantees a fundamental right to life a life of dignity, to be lived in a proper environment, free of danger of disease and infection. It is an established fact that there is a close link between life and environment. The talk of fundamental rights and in particular, right to life would become meaningless if there is no healthy environment.²⁴ The judicial grammar of interpretation has made “right to live in healthy environment” as the sanctum sanctorum of Human Rights.²⁵

The Right to A Wholesome Environment

It has been laid down by the Supreme Court in *Maneka Gandhi v. Union of India*²⁶ case that if a law is enacted by a legislature which touches upon the life and liberty of a person and curtails it, then it is mandatory requirement that the procedure established by it for curtailing the liberty of a person must be reasonable, fair and just. Environmental pollution which spoils the atmosphere and thereby effects the life and health of the person has been regarded as amounting to violation of Article 21 of the Constitution. In *Rural Litigation & Entitlement Kendra, Dehradun v. State of U.P.*²⁷, the first case of its kind in India involving environmental and eco-imbalance; problems was involved the haphazard and dangerous limestone quarrying practices in the Mussoorie Hill Range of the Himalayas. Because of unbridled quarrying vegetation cover and natural falls started disappearing, and resulted in shortage of potable water, damage to the ecology due to transportation activity creating noise pollution, air pollution, vibration and spread of debris of mines. The RLEK never claimed the violation of Right to Life guaranteed under Article 21 of the Constitution, but it can be inferred from the judgment that the Supreme Court entertained the environmental complaint under Article 32 of the Constitution as involving the violation of Article 21- Right to life.

In *M.C. Mehta v. Union of India*²⁸ (Ganga Pollution case) Justice Singh declared in unequivocal terms that the closure of industries (tanneries) may bring unemployment and loss of revenue to the State. 'but life, health and ecology have greater importance for the people.'²⁹ In *T. Damodhar Rao v. S.O. Municipal Corpn., Hyderabad*³⁰ case which related to stop the Life Insurance Corporation and the Income Tax Department from building residential house in a recreational zone, the Andhra Pradesh High Court held, "it would be reasonable to hold that the enjoyment of life and its attainment and fulfillment guaranteed by Article 21 of the Constitution embraces the protection and preservation of nature's gifts without which life cannot be enjoyed." The slow poisoning by the polluted atmosphere caused by environmental pollution and spoliation should be regarded as amounting to violation of Article 21 of the Constitution. The court held that the attempt of the respondents to build houses in this area is contrary to law and also contrary to Article 21 of the Constitution.

It is submitted that the disturbance of ecology and pollution of water, air and environment by reason of quarrying operation definitely affects the life of the person and thus involves the violation of right to life and personal liberty under article 21 of the Constitution. It is for the infringement of this right to life, that the Court entertained the petition under article 32 of the Constitution. *M.C. Mehta v. Union of India*,³¹ popularly known as (oleum gas leakage case), the Supreme Court once again impliedly treated the right to live in pollution free environment as a part of fundamental right to life under article 21 of the Constitution. *Subhash Kumar v. State of Bihar*,³² the Supreme Court clearly said that, right to life includes the, "right to enjoyment of pollution free water and air for full enjoyment of life."

The Right to Livelihood

The right to livelihood is implicit in the constitutional guarantee of right to life enshrined in Article 21 of the Constitution. This provision has served as an effective check government action which tends to affect the environment and disrupt the normal life style of the poor people. In *Olga Tellis v. Bombay Municipal Corporation*³³ case the court held that "Deprive a person of his right to livelihood and you shall have deprived him 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".

Thereafter, in *Banawasi Seva Ashram v. State of Uttar Pradesh*,³⁴ case the Supreme Court details safeguards to protect tribal forest dwellers who were being ousted from their forest land

by the National Thermal Power Corporation Limited (NTPC) for the Rihand Super Thermal Power Project. The court permitted the acquisition of the land only after the NTPC agreed to provide certain facilities to the ousted forest dwellers.³⁵ In other Article 32 petitions, the court has passed interim order requiring state agencies to resettle and rehabilitate tribal's who were being displaced by dams.³⁶

In M. C. Mehta v. Union of India,³⁷ (popularly known as *Taj Mahal Case*), Supreme Court once again followed the path of sustainable development and directed that the industries operating in Taj Trapezium Zone (*TTZ*) using coke/coal as industrial fuel must stop functioning and they could relocate to the alternate site provided under the Agra Master Plan. In this case also the Supreme Court specified the rights and benefits to which the workmen of such industries were entitled and thus, protect their right to livelihood³⁸ and followed the guiding principle of sustainable development. Thus, from the various decisions of the Supreme Court it is evident that development is not antithetical to environment. However, thoughtless development can cause avoidable harm to the environment as well as it can deprive is people of their right to livelihood.

The Right to Equality

The article 14 of the Constitution states that “the state shall not deny to any person equality before the law or the equal protection of laws within the territory of India”, guarantees the right to equality. This article is the principle instrument to strike at the arbitrariness of an action should it involve a negation of the right to equality.³⁹ The right to equality as enshrined in Article 14 of the Constitution may be infringed by government decisions which may have impact on the environment, particularly in cases, where permissions are arbitrarily granted, for instance, for construction that are in contradistinction of development regulation or for mining consequences. Thus, we find that Article 14 can be used as a potent weapon against governmental decisions threatening the environment.

In *State of Himachal Pradesh v. Ganesh Wood Products*,⁴⁰ the Supreme Court held that a decision making authority must give due weight and regard to ecological factors such as the environmental policy of government and the sustainable use of natural resources. A government decision that fails to take into account relevant considerations affecting the environment is invalid.⁴¹

Is it possible to derive *a right to intergenerational equity* from Articles 21 and 14? The

central tenet of the theory of intergenerational equity is the right of each generation of human beings to benefit from the cultural and natural inheritance from past generations as well as the obligation to preserve such heritage for future generations. Intergenerational equity requires conserving the diversity and quality of biological resources, and of renewable resources such as forests, water and soils.⁴² Can this 'right' be invoked to preserve archeological monuments or genetic resources threatened with destruction by State action or inaction? In *Ganesh Wood Products Case* the Supreme Court recognized the obligation of the present generation to preserve natural resources for the next and future generations⁴³

Freedom of Trade and Environment Protection

Article 19 (1)(g) gives to all citizens a right to practice any profession or to carry on any occupation, trade and business. The question which needs to be answered here is whether a person, agency or industry has a right to carry on a business or trade in a manner which is causing an injury to the public and posing health hazard to the society at large? This question came for consideration in the case of *Abhilash Textiles v. Rajkot Municipal Corporation*,⁴⁴ the court held that the petitioners cannot be permitted to the profits at the cost of the public health as they had no right to carry on their business without complying with the requirement of the law. *M.C. Mehta v. Kamal Nath*⁴⁵, the Supreme Court made it abundantly clear that if a hotel is discharging untreated effluent, into the river Beas, thereby disturbing the aquatic life and causing water pollution, it cannot be permitted to work. 'Any' disturbance of the basic environment elements, namely air, water and soil, which are necessary for 'life', 'would' be hazardous to life. Thus, the Court in the exercise of jurisdiction under Article 32 can not only award damages but can also levy 'fine' exemplary damages on the erring industry hotel which will act as a deterrent for others not to cause pollution. In *Wing Commander Utpal Barbara v. State of Assam*⁴⁶, the Court declared that a total ban on the use of polythene bags by the magistrate by issuing an order under Section 144 of the Criminal Procedure Code, 1973 is violative of freedom of trade and business. The remedy instead of a ban could have been to take appropriate steps regulating its use and disposal and to resort to appropriate legislation for it.

Constitutional Remedies

Article 32 is one of the fundamental 'right known as right to constitution remedies' for the enforcement of the fundamental rights. This constitutional duty of protection of fundamental rights has been cast on the Supreme Court of India under Article 32 and on the State High Courts

under Article 226 of the Constitution. The Court while granting relief to the aggrieved and checking activities injurious to environment has issued orders, directions and writs time to time. Under public interest litigation (PIL) Courts possess wide powers to grant relief and prevent any activity endangering humans and damaging the environment. PIL can be brought by any public spirited person, who may not be an aggrieved person, for a common cause or against any activity or conduct which adversely affects the public at large or group of persons.⁴⁷ Even a voluntary organization can initiate Public interest litigation.⁴⁸ Supreme Court and High Court respectively to issue writs in the nature of habeas corpus, mandamus, certiorari and prohibition are generally resorted to in environmental matters.

Distribution of Legislative Powers

The constitution under Article 246 provides for division of powers between the Union and the States. Part XIII of the Constitution contains provisions governing the legislative and administrative relations between the Union and the States. The parliament and the legislatures of any state have exclusive power to make laws with respect to the matters contained in List I (Union List) and List II (State List) in the VIIth Schedule of the Constitution respectively. In addition to this, the Union and the State also enjoy concurrent powers to make laws on any subject enumerated in List III (Concurrent List) of the Schedule.⁴⁹

Article 253 and Environmental Legislation

Article 253 of the Constitution gives power to Central Govt. to make laws implementing international obligation of the country as well as any decision taken at an international conference, association or other body. The provision reads, "Notwithstanding anything in the foregoing provision, 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 any decision made at any international conference, association or other body." The authority vested in Central Govt. under the provisions contained in Article 253 has been exercised by it in enacting the Air (Prevention and Control of pollution) Act, 1981, and the Environment (Protection) Act, 1986.

Fundamental Norms

The fundamental norms are recognized by the court to derive, adopt and apply a range of principles to guide the development of environmental jurisprudence given below:

- (1) Every person enjoys the right to a wholesome environment, which is a facet of the right to life guaranteed under Article 21 of the Constitution of India.⁵⁰
- (2) Enforcement agencies are under an obligation to strictly enforce environmental laws.⁵¹
- (3) Government agencies may not plead non-availability of funds, inadequacy of staff or other insufficiencies to justify the non-performance of their obligations under environment protection laws.⁵²
- (4) The 'polluter pays' principle which is a part of the basic environmental law of the land requires that a polluter bear the remedial or clean up costs as well as the amounts payable to compensate the victims of pollution.⁵³
- (5) The 'precautionary principle' requires government authorities to anticipate, prevent and attack the causes of environmental pollution. This principle also imposes the onus of proof on the developer or industrialist to show that his or her action is environmentally benign.⁵⁴
- (6) Government development agencies charged with decision making ought to give due regard to ecological factors including (a) the environmental policy of the Central and state government; (b) the sustainable development and utilization of natural resources; and (c) the obligation of the present generation to preserve natural resources and pass on to future generations an environment as intact as the one we inherited from the previous generation.⁵⁵
- (7) Stringent action ought to be taken against contumacious defaulters and persons who carry on industrial or development activity for profit without regard to environmental laws.⁵⁶
- (8) The power conferred under an environmental statute may be exercised only to advance environmental protection and not for a purpose that would defeat the object of the law.⁵⁷
- (9) The state is the trustee of all natural resources which are by nature meant for public use and enjoyment. The public at large is the beneficiary of the sea-shore, running waters, air, forests and ecologically fragile lands. These resources cannot be converted into private ownership.⁵⁸

National Green Tribunal

The Indian law commission in its 186th report prepared the setting up of environment courts in the states and the centre. Consequently the National Environment Tribunal Act and the National Appellate Authority Act has been replaced by the National Green Tribunal Act, 2010. Justice Swatanter Kumar has been appointed first chairperson. The main function of the Tribunal has been established for effective and expeditious disposal of cases pertaining to environmental protection, conservation of forests and other natural resources including enforcement of any legal right relating of environment and providing compensation for damages to the persons and property and matter connected therewith or incidental there to.

Conclusion & Suggestions

The whole of the above discussion demonstrates the active role of the Supreme Court of India as People's as well as environment court in the last decade the court has showed its contribution in the development of environmental jurisprudence. The Ratlam Municipality case, Delhi Gas Leak case, The Ganga Pollution case, Dehradun Quarrying case, Calcutta Taj Hotel, etc. are some of the notable examples where the court, not only by liberalizing the traditional rule of locus standi has evolved the concept of public interest litigation but introduced novel innovative techniques directed at protection of environment. The court by additionally providing new remedies or reliefs and by appointing commissions to look into the task of identification and monitoring the pollution has been able to provide adequate relief and compel the state to carry out the directions given by it from time to time. To a great extent the Supreme Court has succeeded in bridging the gap between the law and its implementation. Apart from giving directions the court has forced the industrialists to fulfill their constitutional duty relating to the environment. The court has done its job by fulfilling its obligation and performing its duty. It can be well submitted that judiciary is not the only effective form to resolve environmental problems. The Govt. of India on the basis of law commission recommendation, 186th report, has been established environmental Courts in the state and at the centre level. It is a duty of Parliament to create a separate budget at the union and State level for its smooth functioning and to create the general awareness among the people insuring protection and development of environment. Hence there is an urgent need that citizens as well as the state must sit up and take notice of environmental degradation and take appropriate steps to improve it.

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15. A.I.R. 1987 SC. 110
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17. Id., at 181
18. AIR 1988 H.P. 4. See also General Public of Saproon Valley v. State of H.P., AIR 1993 H.P.52
19. (2010) 10 SCC 604
20. (2002) 4 SCC 356.

21. Principle I of the Stockholm Declaration provided that man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and well being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.
22. See *Unni Krishnan v. State of A.P.* (1993) 1 SCC 645.
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34. AIR 1987 SC 374. In the course of its order the court observed that the tribals `for generations had been using the jungles around for collecting the requirements for their livelihood- fruits, vegetables, fodder, flowers, timber, animals by way of sport and fuelwood.' Although not explicitly referred to in the order, Article 21 and the right to livelihood were impliedly relied on by the court. (Subsequent orders in the same case are reported at 1987 (1)

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