

Reading the Preamble to the Constitution of India from an Environmental Perspective

Aditya Ranjan

Research Scholar, Faculty of Law, University of Delhi. Judicial Magistrate, Sitapur, Uttar Pradesh Judicial Services.

ARTICLE INFO

*Correspondence:

adiram77@gmail.com
Research Scholar,
Faculty of Law,
University of Delhi.
Judicial Magistrate,
Sitapur, Uttar Pradesh
Judicial Services.

Dates:

Received: 25-01-2024
Accepted: 16-03-2024
Published: 10-07-2024

Keywords:

Preamble, Environment,
Pollution, Philosophical
Aspects, Justice

How to Cite:

Ranjan, A. (2024)
Reading the Preamble
to the Constitution
of India from an
Environmental
Perspective. DME
Journal of Law, 5(1), 1-11.
doi: 10.53361/dmejlv5i01.01

Abstract

The Preamble to the Constitution of India declares the constitution to be a people's document and it also sets basic objectives sought through the constitution. Even the apex court of India has stated that preamble is a key to open the minds of the framers of the constitution¹. In such a scenario, the preamble to the Constitution of India holds an important place as the guide to the legislators. But the preamble to the Indian Constitution has no mention of 'Environment' which needs to be interpreted in the light of other philosophical aspects including Justice (social, economic and political), Liberty (of thought, expression, belief, faith and worship), Equality (of Status and opportunity); and Fraternity (assuring the dignity of individual and the unity and integrity of nation). The environment is one of the basic elements which contributes to the growth of human being² and in such conditions the requirement of a clean and unpolluted environment is necessary for an individual's growth, therefore, the equal access to clean environment becomes a right on part of individuals and a duty on state to provide every individual with a clean environment. This paper will attempt to elaborate the different perspectives of the Environment under the head Justice; and a further investigation regarding the religious aspects of environment and their contribution to the environmental pollution will also be done.

INTRODUCTION

The human existence is subjected to two important factors i.e. the environment for social, spiritual, and moral growth¹. and the constitution for the political and legal existence with ascertained rights and obligations. It can be viewed through the various lenses of history and science that how the environment has been conducive to the development and growth of human life. On the other hand, the formation of units among human beings had placed the requirement of having the set of principles to govern those units; and, with the passes of time those units became the states and those set of principles became the legal documents and the constitution. The major part of human history portrays the struggle of humans with nature and the conflicts among themselves. The theories of evolution posed by different scientists have

¹ Ibid.

shown the process in which the humans and other creatures have changed themselves over the time just to stay in line with the environment. On the other hand, the legal scholars have hailed the 'Social Contract' theories which suggests that all men were born free and enjoyed the powers to manage their own affairs, but they felt unregulated. And, to regulate this unregulated the individuals agreed to surrender their sovereignty in favour of the 'General Will'².

The general will in the form of state constitutions had created many rights and duties on the part of both the individuals and the states. These rights and duties recognised by the constitutions around the globe had focused on many basic aspects which were quintessential to the human life. The Constitutions framed after the second World War had many things to learn from the disastrous effects of war and science. Therefore, the constitutions drafted and enacted after this war have assured the environmental protection through express and implied provisions. And, the Constitution of India is one among those constitutions. The Constitution of India is a glaring example of a 'living constitution'³. which keeps changing with the time and development around the globe; and that is why the 42nd Amendment to the Constitution has inserted the Part IVA to the constitution which states certain Fundamental Duties to be performed by the citizens of the country. This Amendment had ensured the environmental protection by making it obligatory on the part of the citizens. In the meanwhile, the international community had realised the importance of protecting the environment and therefore, the international deliberations and agreements took place for the environment. This gave an opportunity to the legislators to enact certain special legislations for the environmental protection by invoking Article 253 of the Constitution⁴. Apart from these, the expanding horizons of Article 21 of the Constitution now include the 'right to pollution free environment'⁵.

2 Justice T.S. Doabia, Environmental & Pollution Laws 234 (Wadhwa and Company, Nagpur, 1st edn., 2005).

3 David A. Strauss, The Living Constitution (Oxford University Press, New York, 2010).

4 The Constitution of India, 1950.

5 Subhash Kumar v. State of Bihar, AIR 1991 SC 420.

and the 'right to sustainable use of natural resources'⁶.

The Preamble to the Constitution of India is not a part of the 'basic structure' doctrine; therefore, it can be amended with a simple majority. Moreover, the Preamble was not drafted along with the constitution, in fact it was added to the Constitution in the end as a guiding philosophy to the constitution with the purpose of clarifying the source, authority behind it; and, it also seeks to clarify the nature of the polity which is sought to be established by the constitution and to give a glimpse of the goals and objectives of the constitution. It is also important to understand that the preamble does not grant any power, but it only gives a direction and purpose to the constitution. It serves some important purposes including- the enacting clause which brings the constitution into force, rights and freedoms which the people of India intended to secure, the basic type of government and polity to be established in the country etc⁷. The preamble is believed to be the crux of the constitution, this makes it very vital for the discussion as the preamble neglects environment in its language. Therefore, this paper attempts to understand the aspects of environment within the existing language of the Preamble. And, further whether there is a need of including environmental aspect to the preamble or not?

Understanding the Language of the Preamble

We, The People of India

The Preamble opens with the phrase "WE, THE PEOPLE OF INDIA" which gives a certain indication that the Constitution of India was drafted along and in consonance with the will of the citizens of the country. This phrase connotes the concept of 'General Will' which was defined by Jean Jacques Rousseau as the 'Contract Social'. As per Rousseau's theory there was a 'State of Nature' where all men were free and enjoyed full powers to manage their affairs. This state of nature was found to be unregulated, and to regulate this people had agreed to surrender their individual sovereignty in favour of

6 Indian Council for Enviro- Legal Action v. Union of India, (1996) 5 SCC 281.

7 M.P. Jain, Indian Constitutional Law 12 (Lexis Nexis Butterworths Wadhwa Nagpur, Gurgaon, 6th edn., 2010).

'general will' which later took the shape of States. This general will was supposed to safeguard the life, liberty and property of the individuals and to frame laws. In other words, it can be said that "Men owe this Justice and Liberty" to this general will⁸. But this general presumption has been criticised by the scholars' time and again as they claim that the use of 'WE' was never inclusive, and it does not show the general will of the people. Majorly, Indian environmental laws are developed on the lines of international conventions and agreements to which India is a party. In other words, we may say that the Environmental laws in India are framed on the parameters set by the international community. And, it negates the role of the phrase 'WE, THE PEOPLE OF INDIA' in the development of Environmental legislations in India to some extent. This necessarily implies that our legislators have a lessor attention to the 'general will' of the people while enacting these legislations which impliedly means that the weightage to the customary practices relating to environmental resources has not been given adequate attention. This causes difficulty in the interpretation of these Environmental laws in many aspects specially when they come in conflict with customary practices related to environmental resources.

Sovereign⁹

The term Sovereign originates from the Latin word "*superannus*" which means supreme. The term sovereign implies that the state has the supreme power over the individuals and associations within its territorial units. However, the concept of sovereignty gets diluted when it comes to the international domain, each state is bound to respect the sovereignty of other states at international level. Further, the concept of sovereignty is absent in Public International Law as these laws are governed by consent between the independent sovereign states¹⁰. But, the Indian concept of sovereignty

⁸ Supra note 4.

⁹ The term 'sovereignty' was coined by the French jurist Jean Bodin in his famous work "Republic" in the year 1577. see Subhi Pandey, Concept of State and Sovereignty; available at: <https://www.legalbites.in/concept-state-sovereignty/> (last visited March 5th, 2019).

¹⁰ Leo Felix Lee, Sovereignty Over, Ownership of, and Access to Natural Resources; available at: <https://www.eolss.net/sample-chapters/C04/E4-21-05.pdf> (last visited April 1st, 2024).

differs, as it disagrees from the view that sovereignty is absolute and unlimited power. In India, the constitution is supreme which hands the executive sovereignty to the President and the legislative sovereignty to the Parliament and State Legislatures respectively, it also neglects the judicial sovereignty¹¹.

The Environmental Laws in India derives their authority from the government which includes all the three wings of the Parliamentary form of government i.e. The Executive, The Legislature and the Judiciary. The environmental legislations are drafted and enacted by the Legislature and they get enforced only after the assent from the President. After their enactment, the role of judiciary begins where the judicial wing must check the constitutionality of any legislation which is challenged on the grounds of being *ultra vires* to the Constitution. Therefore, it can be understood that the Environmental legislations prevailing in our country are very much in line to the concept of sovereignty as recognised by the Constitution in India because none of these legislations were ever held to be the *ultra vires* to the Constitution in totality.

Socialist¹¹

The concept of 'Socialist' state though included in the Preamble through an amendment, but it was always present in the constitutional goals of India under the Part IV of the constitution which deals with the Directive Principles of State Policy. The concept of socialism advocates for the state ownership as a matter of policy but it does not mean that it completely negates the private ownership on the material resources of the nation. The provisions in Part IV of the Indian Constitution advocates for the distributive justice in terms of distribution of material resources for the common good¹². The term 'material resources' has been given a very broad connotation by the Supreme Court and it is wide enough to cover the natural resources along with the physical resources and property¹³.

¹¹ Added by the Constitution (Forty-second Amendment) Act, 1976; sec. 2(a)

¹² The Constitution of India, art. 39(b)

¹³ Centre for Public Interest Litigation v. Union of India, AIR



The concept of socialist state as reflected through preamble necessarily implies that the framers of the constitution wanted a balanced ownership of the natural resources. The kind of framework given in our constitution allows the state to overpower the natural resources to satisfy the public at large and at the same time it also leaves a room for the individuals and the corporations to lead the natural resources for their own enhancement both economically and socially. This could be understood as the basis of the Corporate Social Responsibility of corporations and individual as well as the Public Trust Doctrine on the part of State.

The aim of democratic socialism is to end poverty, ignorance, disease and inequality of opportunity¹⁴. The Environmental laws are part of the State responsibility of providing a clean and pollution free environment to every individual in form of equal distribution of disease-free environment. And, these legislations also indicate that state is striving towards establishing an equally soothing environment to every individual which is conducive to the health of public at large.

Secular¹⁵

India is a country of religions largely dominated by Hindu population which stands tall as 827 million (around 80.5 percent of the total population)¹⁶. In spite of this fact, the Constitution stands for a secular state of India. The concept of secularism has been inserted to the preamble by the amendment in 1976. Hon'ble Supreme Court in *M.P. Gopalakrishnan Nair v. State of Kerala*¹⁷, has held-

"the object of insertion was to spell out expressly the high ideas of secularism and the compulsive need to maintain the integrity of the nation which are subjected to considerable stresses and strains, and vested interests have been trying to promote their selfish ends to the great detriment of public good."

In other words, it can be said there is no official

religion in India and this argument is also supported by the fact that several fundamental rights guarantee the freedom of worship and religion as well as rejects discrimination on the ground of religion¹⁸. The concept of secularism is reflected in the environmental laws as well where every person is subject to same standards to follow and same punishments in case of failure regardless of his/her religion.

Democratic

The term democracy means 'rule by the people' i.e. it is the people who rules the state. The constitution of India recognises an indirect democratic setup of the government where people elect their representatives to make and administer the laws which is different from a direct democracy in which people themselves votes for the laws and amendments in form of referendum. Therefore, the legislations and constitutional amendments are drafted by the representatives of the people sitting in Parliament and State Legislatures which ultimately are recognized as the 'general will' of the people. The Environmental legislation in India qualifies this test of democratic governance as they all are made by the parliament for the administration of environmental resources and their management to the best interest of the public which is a part of the directive principles of state policy.

Republic

The term republic implies that a nation is governed through a representative system where every individual elects their representative and have a say in the decision-making process of the country. In India, any individual who has attained the age of 18 can be a part of electoral roll and can cast his vote for the election of the representative. There is a very minor difference between the democracy and republic; in a democracy people have the right to elect their representative but the government may not be responsible to the minority and it may be governed on the terms of the majority while on the other hand, in a republic each and every individual has defined rights and their rights cannot be withdrawn on the basis of the will of the

2012 SC 3725: (2012) 3 SCC 1.

14 Supra note 9 at 14.

15 Supra note 15.

16 Census and You, Religion; available at: http://censusindia.gov.in/Census_And_You/religion.aspx (last visited on March 6th, 2021)

17 AIR 2005 SC 3053: (2005) 11 SCC 45.

18 The Constitution of India, art. 15,16 and art. 25, 26, 27.

majority¹⁹. Indian constitution declares India to be a democratic republic that means it is governed by the constitution not by the will of majority.

The concept of a republic state as mentioned protects the rights of minorities, but it seems very contradicting when it comes to the environmental protection of the tribal areas. Even the beautifully articulated and framed environmental laws of the country gives an indication that they do not care much about the tribal practices related to the environmental resources. The tribal communities in India are traditionally dependent on the environmental resources but the governments in Indian republic have given much importance to the economic factors and in order to that they permitted the corporations to invade the tribal areas to setup their industries. All the developmental projects in tribal areas have costed the environmental resources of tribes and that has not been adequately taken care of by the government which is conflicting to the concept of republic as a republic government must protect the rights of every minority and is bound to consider the voices of minority and tribals. There are ample examples where the authorities have permitted the private corporations to set their industries in the tribal areas or to say tribal environment without considering their opinion on the same and ultimately it resulted in the ignorance of the rights of the tribal communities. *Orissa Mining Corp. Ltd. v. Ministry of Environment and Forest*²⁰. is a glaring example of such controversy where the Dongaria Kondh tribe had to opt for strong protest to stop the of bauxite mining project in the Niyamgiri Hills of Rayagada and Kalahandi district. Apart from this the whole controversy of environment and development often suppresses the rights of tribals.

Fraternity

The concept of fraternity underlines the noble and humane principle that *"All the human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of*

*brotherhood"*²¹. The idea of fraternity as enshrined in the Preamble includes the assurance of dignity to every individual which has helped in removing the social evils like untouchability etc²². Further, the fraternity also includes the 'unity and integrity of the nation'²³. It is interesting to see that every person in India is required to maintain the 'unity of the nation'; and, maintaining the unity of the nation necessarily implies that one should respect and protect the rights of others. Now that Indian constitution recognises the environmental rights to the citizens of the country, it can be said that to maintain the fraternity of the country one has to take care for the environment. The other aspect of fraternity i.e. 'integrity of the nation' can also be interpreted from an environmental perspective. Generally, we understand the integrity in terms of sacredness but there are other meanings to the term 'integrity' which includes a stage of 'wholeness and completeness' and the environment is one of the most important factors to any nation in that sense the maintenance of environmental standards and the performance of environmental duties must be the part of fraternity as enshrined in the constitution of India.

The Core of Constitutional Rights: Justice, Equality and Liberty

The constituent assembly members had brought their vast experience of life to the text of the constitution and made best of their efforts to provide every person with Social, Economic, and political justices inclusive of Equality and Liberty for everyone within the constitutional framework. Their deliberations, which run into twelve volumes, are the testimony to the time and attention which they gave with care and concern to evolving a generally acceptable instrument for the regulation of the fundamental affairs of the country and the life and liberty of its people²⁴. These concepts "though treated as eternal verities, are emptied of the vital occasions which gave them birth and have only that

21 Universal Declaration of Human Rights, art. 1

22 *Buckingham and Carnatic Co. v. Venkatiah*, AIR 1964 SC 1272.

23 Substituted by the Constitution (Forty-second Amendment) Act, 1976, sec. 2(b), for "Unity of the Nation".

24 *A.K. Roy v. Union of India*, AIR 1982 SC 710.

19 Democracy vs. Republic; available at: https://www.diffen.com/difference/Democracy_vs_Republic (last visited on April 1st, 2024).

20 (2013) 6 SCC 476.



content which each generation must pour into them anew in the light of its experience"²⁵.

The concept of Justice, Equality and Liberty are core to the Part III and Part IV of the Indian Constitution. The Principle of Equality and Liberty goes with the fundamental rights of the persons in India; and justice plays an important role at the policy making and policy implementation levels. The Equality aspect includes the equality of status and opportunity, the Liberty aspects includes the liberty of thoughts, expression, belief, faith, and worship while the Justice aspect includes the social, economic, and political justice to each person. These core principles can be interlinked with every aspect of human life and existence. Environment being an important part of the human life cannot be segregated from the interpretation. Therefore, this paper is aimed at interlinking these core principles in line with the environmental aspect.

Justice: social, economic and political

Justice is a quest for every society and that is the only reason why the discussion relating to it has always been raised passionately. Probably, there is no other question which has caused so much blood and so many bitter tears to be shed; no other question has ever been the subject of such intensive thinking by the illustrious thinkers from Plato to Kant; and yet this question is unanswered even today as it ever was²⁶. There are many aspects of Justice which have been suggested by the scholars over the time some considers it to be in the domain of morality; some consider it to be a social virtue, some looks at it as a tool to maintain the equilibrium in human affairs and some consider it as equality of consideration to all to comes to its domain²⁷. The Indian constitution also seeks to secure the Social, Economic and Political justice to every person.

The principle of social justice reflects the idea of elimination of discrimination which is based on the principle of equality. The provisions contained

in the Part III of the Indian Constitution assures the elimination of Discrimination on the Basic of religion, race, caste, sex, place of birth, descent, and residence²⁸. It also focuses on the abolition of the untouchability²⁹. in order to protect the social status and to maintain the social equality for every person. The concept of social justice is not limited to elimination of social discrimination only, in fact it seeks to secure a social order in which every individual has ample opportunities of growing in all facets of life including economic sectors as well as in any vocation s/he is engaged in³⁰. The Hon'ble Supreme Court has explained the idea of social justice as-

"The constitution commands justice, liberty, equality and fraternity as supreme values to usher in the egalitarian social, economic and political democracy. Social Justice, equality and dignity of person are the cornerstones of social democracy. The concept of 'social justice' which the constitution of India engrafted, consists of diverse principles essential for the orderly growth and development of personality of every citizen. 'Social Justice' is thus an integral part of justice in the generic sense. Justice is the genus, of which social justice is one of its species. Social Justice is a dynamic device to mitigate the sufferings of the poor, weak, Dalits, tribals and deprived sections of the societ³¹.

The idea of social justice includes many facets enshrined in the Part III and Part IV of the constitution of India, which includes- right to equality, right to freedom (of speech and expression, peaceful assembly, form association and union, move freely throughout the Indian territory, reside and settle in any part of the Indian territory), rights regarding conviction for offences, right to life and personal liberty, right to education for children of six to

28 Constitution of India, art. 15 and art. 16

29 Constitution of India, art. 17

30 Constitution of India, art. 38 states as under-

The state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

The state shall, in particular, strives to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

25 See Upendra Baxi (ed.), K.K. Mathew on Democracy, Equality and Freedom, 5 (1978).

26 See Hans Kelsen, What is Justice?, Justice, Law and Politics in the Mirror of Science, 1 (1958) quoted in Rabindra Kr. Pathak, "Justice, Equality, Liberty" in Deepa Kansra (ed.), The Preamble 164 (Universal Law Publishing, 2013).

27 C.K. Allen, Aspect of Justice, 1-33 (Indian Reprint, 1997).

fourteen years of age, right against arbitrary arrest and detention, right against exploitation, right to freedom of religion, cultural and educational rights of minorities, right to constitutional remedies, right to equal justice and free legal aid, rights to and related to work, and the right to health etc. The new development of constitutional rights has seen the inclusion of the environmental rights under various provisions of Part III and Part IV as part of 'social justice' principle. Still there is a lot to be done to assure the environmental protection specifically but not in the name of social justice because the social rights have been given more weightage than the environment in case of direct conflicts.

The concept of 'economic justice' was also included in the preamble as one of the pillars of justice which implies that every man should get just reward for his labour according to his ability irrespective of any social status. It also implies that people should not be discriminated because of their economic condition³¹. The Constitution of India seeks to serve economic justice through many of its provisions. These provisions add many facets to the concept of 'economic justice' including- right to freedom of trade and business, right to livelihood, right to own material resources in permissible manner, right against the concentration of wealth, right to equal pay for equal work, right to free legal aid, right to work and economic interest of Schedule Castes and Scheduled Tribes etc. The constitutional goal of serving economic justice to every individual has put a great responsibility on the government to balance it with other aspects of life of state and its population. But the principle of 'economic justice' is kind of oppressive to the environment, it can be understood with the fact that the quality of environment is degrading day by day and the governments are still supporting the idea of industrial development and they are permitting the corporations to setup their industries at the cost of environment. The untreated waste of industries is affecting the quality of soil, air, and water³². but still they are permitted on payment of fine and an amount towards their corporate social responsibilities which is insufficient in strengthening the environment.

31 Express Newspaper v. Union of India, AIR 1958 SC 578.

32 Sarah P. Campbell, "Indian Tribal Sovereignty and the Environment" 27 URLR 371 (1993).

Moreover, the unregulated agricultural practices for economic benefits have also costed to the environment³³. Not only the governments but the judicial wing also supported the idea of economic justice over environmental justice on a frequent basis. For example, in *M.C. Mehta v. Union of India*³⁴, Hon'ble Supreme Court has held-

"We cannot possibly adopt a policy of not having any chemical or other hazardous industry merely because they pose hazard or risk to the community. Industries, even if hazardous, have to be set up since they are essential for the economic development and advancement of well-being of the people. We can only hope to reduce the element of hazard or risk to the community by taking all necessary measures for locating such industries in a manner which would pose the least risk or danger to the community and maximizing safety requirements in such industries."

Further, the concept of 'political justice' implies that every citizen has an equal right to take part in the organisation of government; either by electing his representative to the legislative bodies at different levels, or by running himself for the membership of any of the legislative bodies in the country. The 'political justice' includes the concept of 'adult suffrage' where every person who has attained the age of 18 years may vote for the election of his representative to any legislative body at any level. This concept also assures that every individual can raise his voice to the public decision-making process where his/her interest is involved. The importance of political justice can be understood through the fact that the constitution has been subjected to the amendments to strengthen the democratic setup of the country. Specially, the 73rd and 74th Constitution Amendments have brought the democratic setup at the village and municipal level which has affected the Indian political justice delivery system in a positive manner. Apart from these amendments there are two important provisions in Part IV of the constitution which seeks to serve the political justice to every citizen. These provisions include- organisation of village panchayats³⁵. Participation

33 Peggy Rodgers Kalas, "Environmental Justice in India" 1 APJHR & L 97 (2000).

34 AIR 1987 SC 1091.

35 The Constitution of India, art. 40



of workers in the management of the industries³⁶. The Indian political system is democratic republic in nature where every individual or group of individual has a right to be heard but this seems inoperable when it comes to the voices of the tribals or the people from the lower strata; which in a way, indicates that the 'political justice' is not served properly within the constitutional framework.

The above description of justice shows that the constitution has secured several facets which stands at the core to the human life. But, it has somewhere neglected the idea of 'environmental justice' which is very vital for the human existence. However, the courts have tried to explain the environmental justice as one of the features of 'social justice' which can be seen through many judicial deliberations. The inclusion of 'environmental justice' can serve a proper justification to the principle of 'justice' which is inclusive of distributive justice. By far, the idea of 'distributive justice' refers to the equal distribution of material resources of a state where the environment resources are included in the material resources; this interpretation should not be limited to the resources only, in fact it must be taken to mean in the terms of quality of environment. This interpretation could help us in restricting the principle of 'economic justice' at the cost of environment which will necessarily bring a better framework for the protection of environment and it will also provide a room to the courts while dealing with the cases of violation of environmental standards. On the other hand, idea of 'political justice' implies that every person is a part of state machinery and decision-making process of the country where s/he can raise her/his voices. But it seems that the public specially the tribes have not their say in the policy making process³⁷. related to environment although we have the concept of Environmental Impact Assessment and Citizens Suit provision present there in Environmental laws. Therefore, I find a need of express inclusion of 'environmental justice' to the language of the constitution through the Preamble itself.

Equality: of status and of opportunity

The Constitution of India guarantees to all person

36 The Constitution of India, art. 43A [inserted by the Constitution (Forty-second Amendment) Act, 1976, sec. 9].

37 Supra note 36.

an equality of status and opportunity which is one of the magnificent corner-stones of the Indian Democracy³⁸. The idea of equality comes from the noble principle "*All the human beings are born free and equal in dignity and rights*"³⁹. At the time of independence one of the major challenges before the constituent assembly was to remove the inequalities which were prevailing in the society at that time. Therefore, the constituent assembly took some serious decisions to establish a legal order where all the persons can enjoy the equal status and opportunity in the various sectors of life. The principle of equality was very well explained by the Hon'ble Supreme Court in *Sri Srinivasa Theatre v. State of Tamil Nadu*⁴⁰.

"Equality is a dynamic concept having many facets. One facet- the most commonly acknowledged- is that there shall be no privileged person or class and that none shall be above law. A facet which is of immediate relevance herein is the obligation upon the state to bring about, through the machinery of law, a more equal society envisaged by the Preamble and Part IV of our Constitution [viz. Directive Principles]."

The above observation made by Hon'ble SC clarifies that the principle of equality as enshrined in the Preamble seeks to maintain a state where every person is equal and subject to the laws of the country; and, it is the responsibility of state to maintain a society free of any discrimination through the operation of law. The equality principle is core to the fundamental rights enshrined in the Part III of the constitution. Article 14 to 18 seeks to secure the fundamental equality. Art.14 particularly aims to secure to all persons, citizens or non-citizens, the equality of status and opportunity referred to in the Preamble⁴¹. The principal of equality, therefore, not only seeks to eliminate discrimination, in fact it tries to protect the interests of each person by providing them with ample opportunities in a same capacity as others i.e. similar status.

The equality of status and opportunity has been a subject of debate in the domain of environmental

38 Indra Sawhney v. Union of India, AIR 1993 SC 477.

39 Universal Declaration of Human Rights, art. 1

40 AIR 1992 SC 999, 1004.

41 Natural Resources Allocations, In Re Special Reference No.1 of 2012, 2012 AIR SCW 6194.

law. Time and again it is pointed by the scholars that the operation of environmental laws has not been same at different levels. Sarah P. Campbell in her writings establishes that the tribals have not been given much reservation in the deliberations related to hazardous industrial waste management. She wrote that the tribal in India considers their land and environment as their mother and an intrinsic part of their life without which they cannot survive, still their opinions were ignored⁴². And, there are many critics of the environmental impact assessment procedure in India who claims that almost all the developmental projects are permitted by the government at the cost of the environment and no government pays much attention towards the issues of environmental degradation which is becoming a serious threat to the people. The environmental impact assessment necessarily requires the inclusion of residents along with the experts to study the possible impact of a project (industrial or developmental) on environment, but there is no established system through which the selection of residents is made to these assessment committees. Apart from this, the environmental legislations provide for a discriminatory punishment procedure. There are provisions in which the violator of environmental standards who is an individual can be subjected to fine or punishment through strict and absolute liability principles. But, on the other hand if the violator is a director of a corporation or is the head of the government department, he may be excused on the ground of unawareness on his part. Which shows that a discriminatory practice is part of the environmental legislations.

In a similar manner, the environmental legislations do not provide equal opportunity to every individual in terms of complain procedure. The citizens suit provision where any individual affected by pollution or any violation of environmental standard may approach to the local authority to complain against the violator, but due to corrupt practices prevalent in the country these complains are not adequately represented by the local authorities and in most of the cases these complains go without any action been taken against the violators. This I see as a violation of equality of opportunity on the part of the victim of environmental pollution.

⁴² Supra note 36 at 382.

Therefore, I believe that the environmental legislations in India requires an overhauling to bring them in terms of equality of status and opportunity as enshrined in the constitutional goals of the country in Preamble.

Liberty: of thought, expression, belief, faith and worship

The principle of liberty as indicated in the Preamble implies the freedom of speech which is inclusive of thoughts and expression, the freedom of religion which is inclusive of belief, faith and worship. The liberty of thought and expression is not in direct conflict with the environmental laws, only the ignorance of the voices and opinions of residents in form of expressions through writings or protests, against establishment of an industry or of a developmental project can be said to be in a conflict with the environmental policies and law. That too because of the principle that the state is the ultimate owner of the environmental resources. But, the right to religion is sometimes directly against the environmental legislations which is required to be regulated by the laws and policies. There exists a plethora of cases in which the use of loudspeakers for religious purposes was challenged in the courts and courts have time and again reiterated that the use of loudspeakers is not intrinsic to any religion but still the use of loudspeakers is not prohibited in the religious places which is causing noise pollution. Apart from this India is a land of religions and almost all the religions consider the environment and environmental resources as sacred and sacrosanct. The Hindu and tribal population in India worships the environmental resources including, wells, ghats, mountains and rivers etc. The largest river of the country Ganga is respected as mother of rivers; therefore, people worship it and offers sweets, flowers, oil filled lamps etc. to it which contributes to the pollution in Ganga which ultimately results in the loss of lives of the species living in Ganga. Even people also flow the dead bodies and ashes of burnt dead bodies of their relatives in rivers as a religious practice which pollutes these rivers excessively. This issue can be addressed by the reasonable restrictions put on the enjoyment of Right to religion based on public health, but it requires a great political will which will be against the will of



majority of the country that is why no government shows interest in restricting it completely.

Therefore, I believe that liberty of faith and worship or religious freedom is in direct conflict with the environment which is required to be regulated. And, an awareness is required to be made because the way we need religion for the purification of soul, in the same way environment also purifies the body and soul of a person⁴³.

CONCLUSION AND SUGGESTIONS

The preamble to any enactment reflects the scope, object and purpose of that enactment and it also recites the ground and causes of making the enactment. The preamble often helps in clarifying the evils of which the remedies are provided in any enactment⁴³. In the same manner, the Preamble to the constitution of India mentions the basic philosophy of the constitution. The principles mentioned therein shows the hopes and aspirations of the people which they had at the time of framing of the constitution. The preamble declares that it is the people of India who adopted the constitution with the great determination. According to the Preamble, the 'general will' of the people of India was to establish a Socialist, Secular and Democratic Republic by submitting their sovereign authority to the nation. The members of the constituent assembly were learned foreseers who drafted such a flexible constitution by leaving a great scope of interpretation. Thus, Indian constitution represents the features of a 'living constitution' while keeping the 'originalist' meaning to the constitutional texts. Further, the Judiciary in India has also contributed to the strengthening of the constitution by bringing in the various theories of interpretation.

The Preamble as mentioned earlier, represents the basic aspirations of the people sought to achieve through the constitution which includes the principles of Justice, Liberty, Equality and Fraternity. But, the preamble does not mention the environmental perspective of the constitution which has been added to the various constitutional

provisions through interpretation by the judiciary. In such a scenario, there is an urgent need to consider the 'environmental justice' as one of the goals of the constitution which will include the equality of status and opportunity to every individual regarding the environmental protection and access to the environmental resources. There is a need of developing more awareness regarding the fundamental duty of protection of environment and resources. Further, the religious practices which are not essential to the religion and are in direct conflict with the environment must be restricted with the proper political deliberation.

The environmental policies must include the opinion of the public and the government need to restrict the industries which are causing pollution. Because the general tendency of government is to satisfy the economic goals than environmental goals which is often reflected in the judicial deliberation as well. For example, in *M.C. Mehta v. Union of India*⁴⁴, where the supreme Court has held-

"We cannot possibly adopt a policy of not having any chemical or other hazardous industry merely because they pose hazard or risk to the community. Industries, even if hazardous, have to be set up since they are essential for the economic development and advancement of well being of the people. We can only hope to reduce the element of hazard or risk to the community by taking all necessary measures for locating such industries in a manner which would pose the least risk or danger to the community and maximizing safety requirements in such industries."

Therefore, we as a nation requires more awareness regarding the environmental protection and its urgent need. The judicial and legislative wings have tried their best of efforts in assuring the environmental justice to public at large but the lack of express will has put down all the efforts made by both the legislature and the judiciary. Therefore, in my opinion the parliament needs to amend the existing preamble to the Constitution of India to add the environmental justice aspect to it. The legislative and implementation history shows how the amendments to the Constitution have opened the ways of interpretation of some provisions. For example, the right to education was always there in Article 45 of the Part IV of the constitution of 44 AIR 1987 SC 1091.

⁴³ Secretary, Regional Transport Authority v. D.P. Sharma, AIR 1989 SC 509.

India and later it was included as one of the many facets of the Right to life in Article 21. But it was the Eighty-Sixth Amendment to the Constitution of India which has given a much-required pace to the Right to Education by insertion of Article 21A. There are number of examples where the amendments have caused a positive change in the attitudes of the people, legislature and the Judiciary. The more appropriate example here can be the inclusion of the word 'Socialist' in the Preamble to the Constitution of India. We have a number of legislations, judicial decisions now, where the laws have been given an interpretation from a socialistic perspective, while keeping public at large in the minds. Same

way we may positively expect that the inclusion of the 'environmental justice' aspect to the preamble will positively change the attitude of judiciary and legislature while dealing with the major issues like 'environmental vs development' etc.

In the closing lines to this work, the researcher would like to highlight the fact that the constitution and this Union of States is always about 'WE, THE PEOPLE OF INDIA'; where we are required to take responsibility of each other and to take a stand for our own self, our environment and our countrymen. The 'INTEGRITY OF NATION' can only be achieved through the 'UNITY' of people for their own causes including the ENVIRONMENT.