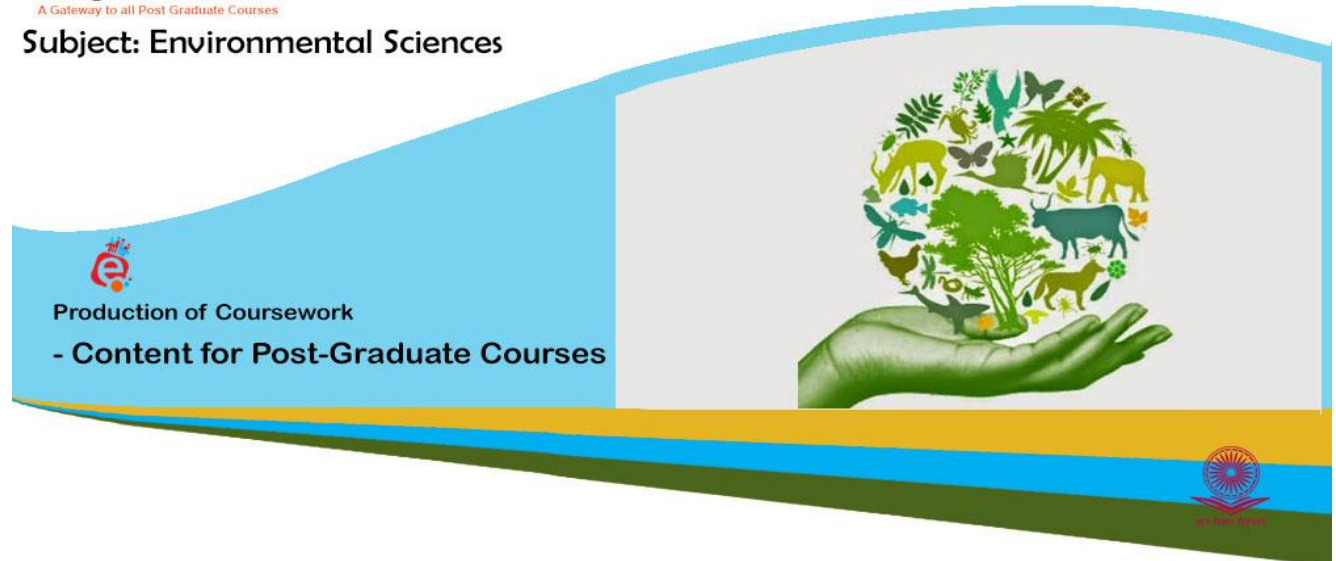


Subject: Environmental Sciences



Paper No: 13 **Environmental Law and Policies**

Module: 2 Constitutional Provisions relating to Environment Protection in India



Development Team

Principal Investigator & Co- Principal Investigator	Prof. R.K. Kohli Prof. V.K. Garg & Prof. Ashok Dhawan Central University of Punjab, Bathinda
Paper Coordinator	Prof. Paramjit Singh Jaswal, Rajiv Gandhi National University of Law, Punjab
Content Writer	Dr. Manoj Kumar Sharma Rajiv Gandhi National University of Law, Punjab
Content Reviewer	Prof. Paramjit Singh Jaswal, Rajiv Gandhi National University of Law, Punjab
Anchor Institute	 Central University of Punjab

Description of Module	
Subject Name	Environmental Sciences
Paper Name	Environmental Law and Policies
Module Name/Title	Constitutional Provisions relating to Environment Protection in India
Module Id	EVS/ELP-XIII/02
Pre-requisites	
Objectives	To apprise the learner regarding constitutional provisions pertaining to environment protection
Keywords	Constitution of India, Environment, Fundamental Rights, Fundamental Duties, Directive Principles



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Constitutional Provisions relating to Environment Protection in India

1.1 Introduction

Traditionally, environmental ethics have formed an inherent part of Indian religious precepts and philosophy. Protection of forests and environment has always been part of Dharma (PC Joshi, 2007). Worship of nature – Sun, Moon, Earth, Air and Water – was not merely a primitive man's response to the fear of the unknown, but it arose from the deep reverence shown to the forces of nature which sustained and preserved human life on earth. The basic tenet that underlies this deep reverence for nature is the belief that life is a singular, continuous and uniform phenomenon and even a small change in one part of the eco-system is likely to reverberate throughout. Guru Nanak (Founder of the Sikh Religion, 1469-1539), said 'Pawan Guru, Pani Pita Mata Dhart Mahat, Divis Raat Doi Daia, Khele Sagal Jagat' (Air is like God, Water is father and Earth is the mother. It is through the harmonious interaction of all these three vital ingredients that the whole universe is being sustained) [Jaspal Singh, 2009]. However, rapid industrialization and urbanization coupled with declining social values have contributed towards degradation of environment throughout the globe and India has also witnessed and contributed towards the same. (Manoj Kumar, 2011).

Constitution of India is a dynamic instrument which echoes the values, aspirations and the ideals of our freedom movement. Constitutional provisions strive for having clean environment and it is reflected in Constitutional provisions as interpreted by the higher judiciary.

1.2 Learning Outcomes

The objective of this paper is to apprise the reader about the constitutional provisions concerning the protection of environment and promotion of clean and healthy environment; the interpretation of constitutional provisions by higher judiciary and the legal regime established under the Constitution.

The discussion is divided into the following topics:

- Indian Constitution and Environmental Protection
 - Preamble to the Indian Constitution
 - Directive Principles of State Policy
 - Fundamental Duties

- Fundamental Rights
- Distribution of Legislative Powers between the Union and the States
- Judicial Approach
- Conclusions and Summary

2.1 Indian Constitution and Environmental Protection

Constitution of India lays down unique federal structure for India. It is a bulky piece of legislation which not only gives shape to the aspirations of freedom fighters by laying emphasis on fundamental rights but also lays down the Directive Principles of State Policy which the legislature should keep in mind while legislating. Part XI of the Constitution dealing with legislative relations lays down detailed division of subjects on which Union and State governments can legislate. This part deals with the constitutional provisions pertaining to environment contained in different parts of the constitution.

2.1.1 Preamble to the Indian Constitution

The Preamble to the Indian Constitution which starts with “We the People” sets out the goals and objectives of the Constitution. It declares India to be a Sovereign Socialist Secular Democratic Republic. It has been declared to be a key to open the mind of constitution makers.¹ Though Words “Secular and Socialist” were added later on to the Constitution by 42nd Amendment yet the Constitution had secular as well as socialist fabric right from its inception. Various provisions in the Constitution deal with the socialist and secular fabric of the nation in particular Part IV lays down emphasis on Socialistic pattern of governance and Part III spells out the secular fabric of the country.

Word Socialist in the Indian Constitution read in conjunction with Part IV of the Indian Constitution points out that the Constitution adopted welfare government on socialistic pattern whose prime aim was welfare of people. Social welfare is not possible if the people are forced to live in unclean environment which jeopardise their health and lives. The use of words “Democratic Republic” further brings the point home that the government is to work for the welfare of the masses and that the people have right in participate in government process. This implies that government shall seek to provide, apart from other things, a clean environment suitable for human abode.

The Preamble also aims to achieve Justice - Social, Economic and Political. A nation where rich and influential pollute the environment by uncontrolled and rampant industrialization and unregulated, unhindered and illegal mining without caring for the environment causing irreparable loss to the ecology and people can not be said to be a nation having welfare state and providing social and economic justice. Hence, the Preamble not only talks about socialistic pattern but also that there shall be economic, political and social justice. Thus, though the Preamble does not expressly deal with environment yet the language of Preamble is wide enough to cover environment protection and clean environment as implicit therein.

2.1.2 Directive Principles of State Policy

Part IV of the Constitution of India lays down Directive Principles of State Policy. They lay down the socio-economic goals of the nation. Though Directive Principles are non-justiciable yet they have been declared to be fundamental in the governance of the country (Article 37). Before 42nd Amendment, there was no specific provision in Part IV dealing exclusively with environment. However, goal of environment protection in the Indian Constitution can be inferred from the provisions enshrined in Articles 38, 47 and 50 read with Article 37.

Article 37 casts a duty on the State (i.e. all the organs of the State – legislature, executive and judiciary) to apply directive principles in making laws.

Article 38 seeks to achieve welfare of the people by casting obligation on the State to target social, economic and political justice. As explained earlier, social, economic and political justice alongwith welfare of people enjoins a duty upon State to protect and preserve the environment which is essential for the well being of the country and of future generation.

Article 47 spells out the primary duty of the State to improve public health (Article 47). Improvement of Public Health takes within itself that the environment is free from pollution and conducive for human dwelling and public health. The surrounding environment filled with smoke, pollutants and smog caused by rampant, uncontrolled and unregulated industrialization, construction activities and stubble burning causing irreparable damage to the lungs of people living in vicinity and causing other health hazards is surely anti-thesis to the goal enshrined in Article 47 i.e. improvement of public

health. Thus, though article 47 does not spell out in express terms the duty of the government to protect environment and promote clean environment yet it is implicit in it because improvement of public health is not possible in an unclean environment.

Article 51 provide for promotion of internal peace and security and for fostering respect for international law and treaty obligations. Henceforth, State shall endeavour to implement international law and treaties and foster respect for them including but not limited to international obligations pertaining to protection of environment. Thus Article 51 seeks to promote protection of environment in consonance with international obligations.

Thus, though there were no express provisions pertaining to protection of environment in the Constitution yet promotion of environmental protection was implicit in Part IV of the Constitution of India even prior to its amendment by Constitution (Forty-second Amendment) Act, 1976.

Constitution (Forty-second Amendment) Act, 1976 inserted an express provision pertaining to environmental protection in Part IV in the form of Article 48A. It reads as under:

The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

After insertion of an express provision in Part IV alongwith other provision in other parts of the Constitution, it became incumbent on the part of the State to protect the environment and to promote clean environment. As stated earlier directive principles are fundamental in the governance of the country and all the organs of the State while making laws are to apply directive principles.ⁱⁱ

It must be remembered that though directive principles of state policy are non-justiciable yet it does not preclude the courts to declare any law as unconstitutional which is in violation of Part IV (Paramjit Jaswal, 2015). Similarly, courts are to ensure that the other organs of the State act as per the law of the land. Moreover, as observed by the Supreme Court in *Mumbai Kamgar Sabha v. Abdulbhai*ⁱⁱⁱ where two choices are available in the interpretation of the laws, the judiciary should lean in favour of the construction which is in conformity with the socio-economic philosophy enshrined in Part IV of the Constitution.

Further, as will be evident from the discussion in the next section, many of the directive principles of state policy when interpreted in conjunction with Part III and Part IV-A have been elevated to the status of fundamental right including the right to live in pollution free environment.

2.1.3 Fundamental Duties

Part IV A of the Constitution of India inserted by Constitution (Forty-second Amendment) Act, 1976 imposes duties upon every citizen of India. Article 51A casts eleven duties upon the citizens of India.^{iv} Article 51A(g) casts the following duty upon the citizens of India

To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures

Mode of enforcement of fundamental duties was not expressly provided by the Constitution. However, the powerful pronouncement of the Rajasthan High Court in *L.K. Koolwal v. State of Rajasthan*^v clarified the co-relation between rights and duties when the court observed that rights and duties co-exist and there can not be any right without any duty and there can not be duty without any right. Hence, the duty of one is the right of another and rights are justiciable.

While considering the enforcement of fundamental duty enshrined in Article 51A(g) and the directive principle contained in Article 48A, the Supreme Court in *Shri Sachidanand Pandey v. State of West Bengal*^{vi} observed that Court can not shrug its shoulders on the ground that priorities are matter of policy and therefore, the court should leave the matter. The court concluded that court can always give necessary directions in the matter.

2.1.4 Fundamental Rights

Part III of the Constitution of India enumerates fundamental rights. One of the most important fundamental rights is the right to life and personal liberty enshrined in Article 21. Article 21 provides as under

No person shall be deprived of his life or liberty except according to procedure established by law.

Taking leaf from the observation of Field, J. in *Munn v. Illinois*^{vii} wherein it was held that life does not mean mere animal existence it is much more than that, the Supreme Court of India has held in *Francis Coralie v. Union Territory of Delhi*^{viii} that right to life includes right to live with human dignity and what Article 21 prohibits is not only the deprivation of life but deprivation of all those limbs and faculties by which life is enjoyed including the basic necessities of life such as food, shelter, clothing etc.

The Supreme Court in *Maneka Gandhi v. Union of India*^{ix} interpreted the expression 'procedure established by law' to mean that the procedure must be just, fair and reasonable. After this interpretation coupled with judicial activism, many rights have come to be included within the ambit Article 21. Of late, Article 21 whose potential was never discovered in the past was ultimately pulled out of its deep slumbers and harnessed to engineer social justice which is one of the goals to be attained by the Constitution (Shailja Chander, 1992). Liberal court decisions in the field of life and personal liberty have opened new vistas in the Indian Constitutional Law whereby Article 21 read with Articles 14 and 19 may become a substitute for all other fundamental rights. It has come to be regarded as bundle of rights.

With the expansive interpretation of terms 'life' and 'personal liberty'^x, right to live in clean and unpolluted environment has been held to be part of fundamental right guaranteed under Article 21.^{xi} The pragmatic approach of the Supreme Court including right to clean environment in Article 21 has been discussed in the next sections.

2.1.5 Distribution of Legislative Powers between Union and States

Constitution of India provides a federal structure of governance. Part XI and XII of the Constitution of India deals relations with Union and States. Part XI deal with the legislative relations between Union and States. Whereas Article 246 confer legislative competence on Union and States, Schedule VII distribute the subjects of legislation between the Union and States. Schedule VII contains three lists viz., List-I (Union List), List-II (State List) and List-III (Concurrent List). Union has exclusive competence to legislate with reference to subjects enumerated in list I, States have exclusive competence to legislate on subjects listed in List-II and Union and States have concurrent jurisdiction to make laws on subjects mentioned in List III subject to Union supremacy in case of repugnancy.^{xii}

There is no explicit entry pertaining to environment in any of the lists under the Seventh Schedule. Though List I contains subjects like UNO, entering into treaties and agreements with foreign countries and implementing Conventions, treaties and agreements. It also contains subjects relating to regulations of industry, mines and minerals, ports etc i.e. which have inter-state and pan-India impact. List II contains subjects like Public Health and Sanitation apart from other subjects regarding agriculture and industry. Under Article 248 read with entry 97 List I, Union has exclusive competence to make laws on subjects not enumerated in any of the lists. Constitution (Forty-second Amendment) Act, 1976 inserted entries 17A and 17B in the Concurrent List relating to Forests and Protection of Wild Animals and birds respectively.

This apart, Part XI of the Constitution of India contains Article 253 which empowers the Parliament to legislate for the purpose of giving effect to any treaty, agreement or convention with any country or countries and for the purpose of implementing decisions made at any international conferences.

Accordingly, Parliament has enacted laws under Article 253 read with entries 13 and 14 of Union List to meet its international obligations under the International Conventions and agreements like Stockholm Declaration of 1972.^{xiii}

Thus, there are adequate provisions in the Constitution of India concerning the protection of environment in various parts of the Constitution. Though the subject of environment was not explicitly mentioned in the Constitution prior to Constitution (Forty-second Amendment) Act, 1976 yet the goals enshrined in the Preamble and the directive principles together with provisions incorporated in Part III, in particular Article 21 and its interpretation by the judiciary to include right to clean environment in it coupled with provisions incorporated in Part XI were sufficient to deal with the subject and issues relating to environment. Constitution (Forty-second Amendment) Act, inserted specific provisions pertaining to environment in the Indian Constitution.

3.1 Judicial Approach

The Indian judiciary has been alive to environmental concerns and has adopted pragmatic and activist approach in interpreting constitutional provisions concerning environment protection. The pragmatic and realistic approach of the judiciary has enabled it to read right to live in clean environment as

included in right to life and personal liberty enshrined in article 21. The most remarkable feature of this expansion of Article 21 is that many of non-justiciable Directive Principles embodied in Part-IV of the constitution have now been resurrected as enforceable fundamental rights by the magic wand of judicial activism, playing on Article 21, which was almost a surplusage in the days of Gopalan.

Pollution is the result of modern industrialisation and urbanisation. Rich and literate raise cry against pollution though sometimes they are themselves responsible for it. The poor and slum dwellers remain dumb about it (V.K. Bansal, 1987). Discharge of industrial effluents in water, ponds of dirty water in streets, lack of sewage facilities etc. add to grim water pollution scenario. Air suffocating with smoke and smog created by polluting vehicles, industry and stubble burning have created lots of air pollution thereby adversely affecting health of millions of people. The legislature had enacted various laws to curb and control environmental pollution but they failed to have cut much ice. This being the plight of Indian masses the Supreme Court had to come forward and read right against environment pollution as part of right to life enshrined in Article 21, to relieve the ignorant masses from the trauma and tyranny caused by increasing environmental pollution.

In *B.L. Wadehra v. Union of India*^{xiv}, the petition was filed for directions to Municipal Corporation, Delhi and the New Delhi Municipal Corporation to perform their duties, in particular the collection, removal and disposal of garbage and other waste. Apex court speaking through Kuldeep Singh J expressed grave dissatisfaction over the pollution in the Capital of India and observed,

Historic City of Delhi – the Capital of India – is one of the most polluted cities of the world. The authorities responsible for pollution control and environment protection have not been able to provide clean and healthy environment to the residents of Delhi. The ambient air is so much polluted that it is difficult to breathe. More and more Delhi-its are suffering from respiratory diseases and throat infections. The River Yamuna – the main source of drinking water – is the free dumping place for untreated sewage and industrial waste. Apart from Air and water pollution, the city is virtually an open dust-bin. Garbage thrown all over Delhi is a common sight..... It is no doubt correct that rapid industrial development, urbanization and regular flow

of persons from rural to urban areas have made major contribution towards environmental degradation but at the same time the Authorities – entrusted with the work of pollution control – cannot be permitted to sit back with folded hands on the pretext that they have no financial or other means to control pollution and protect the environment...^{xv}

The court held that right against environmental pollution and to have clean environment is a fundamental right to be found in Article 21 read with article 48A and thus issued directions to Municipal Corporation, Delhi and New Delhi Municipal Corporation regarding collection and disposal of garbage to keep the city clean.

In *Ratlam Municipality v. Vardhi Chand*^{xvi} supreme court ordered the closure of limestone quarries in Dehra Dun-Mussoorie Area. It realised that the closure of limestone quarries would cause financial hardships but the court observed that it is the price that has to be paid for protecting and safeguarding the right of the people to live in a healthy environment with minimal disturbance of ecological balance, and without avoidable hazard to them and to their cattle, homes and agricultural land and undue affection of air, water and environment.

In *Subash Kumar v. State of Bihar*^{xvii} it was held that right to live is a fundamental right under Article 21 of the constitution and it includes the right to enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has a right to have recourse to Article 32 of the constitution for removing the pollution of water or air which may be detrimental to the quality of life.

In *Vellore Citizens Welfare Forum v. Union of India*^{xviii} the petition was directed against the pollution caused by enormous discharge of untreated effluent by the tanneries and other industries in the State of Tamil Nadu. It was argued that untreated effluents discharged by tanneries in the State of Tamil Nadu have polluted the main water supply source and the ground water. The petitioner argued that the ground water near these tanneries have been so polluted that it has become unsuitable for drinking,

large pieces of agricultural land had been turned into barren land and the productivity of large area of land has been reduced considerably. The court discussed Precautionary Principle and concluded that right against environmental pollution is implicit in right to life enshrined in Article 21 of the constitution. After having so concluded, the court proceeded to direct the closure of industries which are not complying with the directions of the Pollution Control Board and NEERI.

Similarly in *M.C. Mehta v. Union of India*^{xxix} where a petition was filed for preventing the degradation of the Taj Mahal due to pollution caused by coal using industries via Trapezium, the Apex Court issued directions to 292 industries located in Agra to change over within a time schedule to Natural Gas as industrial fuel or stop functioning with coal/coke and to apply for relocation or otherwise stop functioning w.e.f. 30-04-1997 on account of violation of Articles 21, 48A, 51A and 47 of the Constitution.

In *M.C. Mehta v. Kamal Nath*^{xxx} it was contended by the petitioner that if a person disturbs the ecological balance and tinkers with the natural conditions of rivers, forests, air and water, which are the gifts of nature, he will be violating the fundamental right guaranteed under Article 21 of the Constitution. Supreme Court accepted the contention of the petitioner and held that any disturbance of basic environment elements namely air, water, soil which are necessary for “life” would be hazardous to “life” within the meaning of Article 21 of the constitution. The court after holding it to be a violation of article 21 proceeded to observe that in these cases polluter pays principle and principle of Public Trust Doctrine applies

In *M.C. Mehta v. Union of India*^{xxxi} with a view to safeguard the countrymen from the vices of air pollution, the Supreme Court refused to grant blanket extension of dead line for conversion of vehicles to CNG. It is pertinent to mention here that the Supreme Court vide its order dated 28th July 1998^{xxii} issued guidelines to convert vehicles to CNG in a reasonable time schedule.

In *N.D. Jayal v. Union of India*^{xxiii}, the Supreme Court again reiterated that right to clean environment is implicit in right to life and personal liberty guaranteed under Article 21. Again, in *Municipal*

Corporation of Greater Mumbai v. Kohinoor CTNL Infrastructure Co. (P) Ltd.^{xxiv}, the Apex court laid down that right to live in clean and healthy environment is part of right to life and personal liberty guaranteed under Article 21. The court went on to hold that this right is also part of common law jurisprudence.

Thus the courts have clearly held that right to live in unpolluted environment is a fundamental right implicit in right to life and personal liberty enshrined in Article 21. Not only this, judiciary has also issued guidelines in certain cases to prevent and remedy ecological balance including the directions to close certain industrial establishments.

Conclusion

From the foregoing analysis, it can be safely concluded that the Constitution of India is a dynamic document and Indian judiciary has, by using interpretative tools, declared various unenumerated rights as fundamental rights. Judiciary has not only declared right to clean environment as a fundamental right but has also developed environmental jurisprudence underlying various important principles like Polluter Pays Principle, Precautionary Principle, Public Trust Doctrine etc. However, despite active role played by the judiciary, the environmental pollution is on the rise. Moreover, no right can be fully protected and guaranteed unless the entire community recognize their moral, ethical, social and constitutional duties and rise up to abide by them.

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Endnotes

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- i Re Berubari Union, AIR 1960 SC 845
- ii Though it is the duty of the legislature to make laws yet in the modern times, the Executive also makes laws in the form of delegated legislation. Similarly, judgments of the judiciary are also part of the law of the land under Article 141 and as such judiciary also makes laws while pronouncing its judgments. Henceforth, it is the duty of all the organs of the State to apply directive principles while making laws.
- iii AIR 1976 SC 1455
- iv Originally there were ten duties, Constitution (Eighty-sixth Amendment) Act, 2002 inserted another duty on the parents or guardians regarding education of children under the age of fourteen years.
- v AIR 1988 Raj. 2
- vi AIR 1987 SC 1109
- vii 94 US 113 (1877)
- viii (1981) 1 SCC 608
- ix AIR 1978 SC 597
- x Term ‘life’ and right to life has been interpreted to include within itself many rights viz. Right to live in clean environment, right to live with dignity, right to just and humane conditions of work, right to basic necessities, right to livelihood, right to health, right to education, right against exploitation etc. Similarly term ‘personal liberty’ has also been interpreted widely to include within its fold liberty to travel abroad, right to privacy, right to have reputation etc. Infact, there is overlapping between two expressions and the difference between the two has almost reached the vanishing point.
- xi B.L. Wadehra v. Union of India, AIR 1996 SC 2969; M.C. Mehta v. Union of India AIR 1997 SC 734
- xii Articles 246 and 254, Constitution of India
- xiii The Environment (Protection) Act, 1986; The Water (Prevention and Control of Pollution) Act, 1974; The Air (Prevention and Control of Pollution) Act, 1981 etc.
- xiv AIR 1996 SC 2969
- xv *Id*, 2970
- xvi AIR 1980 SC 1622
- xvii AIR 1991 SC 420
- xviii AIR 1996 SC 2715
- xix AIR 1997 SC 734
- xx AIR 2000 SC 1997
- xxi AIR 2001 SC 1948
- xxii M.C. Mehta v. Union of India AIR 1998 SC 2963
- xxiii (2004) 9 SCC 362
- xxiv (2014) 4 SCC 538