

The Right to Live in Healthy and Pollution Free Environment: An Analysis in Constitutional Perspective

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Abstract

Humanity is in danger. Mankind faces overwhelming environmental problems which are large scale, long term and strike directly at most intimate links to the biosphere where human beings live. Environment problems is a burning problem now a days, the need of its protection is global issue. Industrialisation, urbanisation, population explosion, poverty, over exploitation of resource, depletion of traditional resource of energy and raw material etc. are some of the factor which has contributed to environmental deterioration the world over. Today, the right to live in healthy and pollution free environment has been recognized as a fundamental right under Article 21 of the Constitution of India by the intervention of the Hon'ble Supreme Court of India. Over the years, the Hon'ble Supreme Court have been paying special attention for the protection of environment by giving effective directions to all persons concerned with the matters by invoking its power under Article 32 of the Constitution of India. In India, the law relating to environment has gained significant movement only through the Public Interest Litigation (PIL) by a public-spirited person. Today, the Public Interest Litigation is an instrument for sealing destruction of justice, when there is gross violation of environmental rights.

Keywords: Pollution, Environment, Fundamental right, Violation, India, Humanity, biosphere, global issue, energy, Article 21.

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INTRODUCTION

The term "environment" is difficult to define. Generally speaking, environment means surrounding. It means everything around a living being. Especially, the circumstances of life of people or conditions of life in the society in which they live. Environment is a set of physical, chemical and social components that, in short or long term, cause direct or indirect adverse effects on living beings and human activities. An environment could be considered a superset in which the given system is a subset. It can consist of one or more parameters, physical or other nature. The abiotic environment consists of air, water and soil, while the biotic environment includes all the living organisms, i.e., plants, animals, microorganisms, that we regularly come in contact. The atmosphere of a given system must necessarily interact with living beings.

Environmental destruction and pollution have seriously threatened the human life, health and livelihood. The object of environmental law is to preserve and protect the nature's gifts to men and women such as water, air, earth and atmosphere from pollution. But the law alone cannot tackle the problem of pollution. There has to be awareness of the problem and sustained efforts are required to tackle it.

Humanity is in danger. Mankind faces overwhelming environmental problems which are large scale, long term and strike directly at most intimate links to the biosphere where human beings live. The environmental pollution has assumed disproportionate dimensions and disturbed the environmental balance which is necessary for human life.

The problem of environmental pollution is as old as the evolution of *Homo Sapiens* of the earth planet. However, different dimensions of the problem of environmental protection and its management have taken a serious turn in the present era. The dominant factors which are responsible to environmental deterioration throughout the world are industrialization, urbanization, population exploitation, poverty, over-exploitation of resources, depletion of traditional resources of energy and raw materials and research for new resources of energy and raw materials. While the scientific and technological progress of man has invested him with immense power over nature, it has also resulted in the unthinking use of the power, encroaching endlessly on nature.

Today, the need of environmental protection has become a matter of political sloganing. The reason is that environmental protection is big issue and ranks high among people's priorities. The political parties and Governments are falling over each other in their eagerness to appear green despite the fact that their actions rarely match their rhetoric.

Today, the right to live in healthy and pollution free environment has been recognized as a fundamental right under Article 21 of the Constitution of India by the intervention of the Hon'ble Supreme Court of India. Since writ jurisdiction can be invoked only where a right is infringed by the State action and since environment can possibly be polluted not only by State action but also by private persons, it is essential to look into the exercise of Writ jurisdiction by the Hon'ble Supreme Court and High Courts in India.

THE RIGHT TO LIVE IN HEALTHY AND POLLUTION FREE ENVIRONMENT IN INTERNATIONAL PERSPECTIVE

International environmental law is a body of international law concerned with protecting the environment, primarily through bilateral and multilateral international agreements. By the late-1960's, the international community realized that an international approach to environmental issues was required. The instruments of international environmental law

are in the forms such as treaty, convention, protocol, agreement, declaration, etc., that can be helpful in determining the scope and role of an agreement.

Declaration of the United Nations Conference on the Human Environment, 1972

The first United Nations Conference on the Human Environment or the Stockholm Declaration on Human Environment was held in Stockholm, Sweden from June 5 to June 16, 1972. In this conference 114 countries, including India participated. The Stockholm Declaration on Human Environment proclaimed that man is both creator and molder of his environment, which gives him physical sustenance and affords him the opportunity of intellectual, moral social and spiritual growth. The protection and improvement of human environment is a major issue, which affects the well-being of peoples and economic development throughout the world [1].

United Nations Conference on the Human Environment at Stockholm, the then Prime Minister of India Mrs. Indira Gandhi while displaying the nation's commitment to the protection of environment said [2]:

"The natural resources of the earth, including air, water, land, flora and fauna and especially representative sample of the nature eco-system must be safeguard for the benefits of present and future generations through careful planning or management, as appropriate... nature conservation including wildlife must therefore receive importance in planning for economic development".

- **Principle 1** of the UNCHE provides that "Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a 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".
- **Principle 2** provides "The natural resources of the earth, including the air, water, land, flora and fauna and especially

representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate”.

- **Principle 3** provides “The capacity of the earth to produce vital renewable resources must be maintained and, wherever practicable, restored”.

The United Nations Conference on Environment and Development (UNCED), 1992

UNCED was held in Rio de Janeiro, Brazil in 1992. The purpose of the conference was to elaborate strategies and measures to halt and reverse the effects of environmental degradation and to strengthen national and international efforts to promote sustainable and environmentally sound development in all countries.

Principle 1 of UNCED declares “Human beings are entirely to a healthy and productive life in harmony with nature” [3].

Agenda 21

Agenda 21 recommends that a concerted action is required in a number of economic areas, including energy, industrial manufacturing, transportation, agriculture, forestry and other land use industries [4].

The International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966:

Article 12(2)(b) of the ICESCR [5] directly mentioned the environment and provides that the improvement of all aspects of environmental and industrial hygiene.

Since India is a signatory to various international agreements and understandings in the field of environment, important principles like the “precautionary principle” has become a part of national law, *i.e.*, the Environment (Protection) Act, 1986. Thus, Indian Constitution under **Article 253** puts an obligation and authorizes the Parliament to implement the decision of any international treaty, agreement of convention with any other country or any decision made

at any international conference, association or other body.

THE RIGHT TO LIVE IN HEALTHY AND POLLUTION FREE ENVIRONMENT IN CONSTITUTIONAL PERSPECTIVE

Strictly speaking, no Constitution deals with a matter such as environmental protection, because basically any Constitution contains only the rules of laws in relation to the power structure, allocation and manner of exercise. Besides Indian Constitution is already a bulky document and brevity is the character of an ideal Constitution. From the point of view, the principles of the Constitutional law as well as the length of the Constitution, it was impossible to have any such provision safeguarding the healthy environment. Therefore, till the subsequent amendments of the Constitution of India was without any specific provision for the protection and promotion of the environment. However, the seeds of such provision could be seen in **Article 47** of the Constitution of India which commands the State to improve the standard of living and public health. To fulfill this constitutional goal, it is necessary that the State should provide pollution free environment.

FUNDAMENTAL RIGHTS AND ENVIRONMENTAL PROTECTION

The Constitutional provisions of Part III and IV dealing with fundamental rights and Directive Principles respectively are supplementary and complementary to each other. **Articles 14, 19** and **21** of the Constitution of India protecting the right to equality, freedom of expression and right to life and personal liberty by reflecting the **Principle 1** of the Stockholm Declaration on Human Environment, 1972 which proclaims that “*Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a 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*”.

Articles 14, 19 and 21 of Fundamental Rights deal with the environmental issues.

Right to Equality (Article 14) and the Protection of Environment:

Article 14 of the Constitution of India provides [6] that the State shall not deny to any person equality before the law or equal protection of the laws within the territory of India. Article 14 being a general Article under Part III plays a very important role in the protection of environment for a variety of reasons. It checks arbitrariness in the discretionary actions of the State authorities. It also gives prominence to the principles of natural justice, fair play and reasonableness.

In the case of *Bangalore Medical Trust -vs- B. S. Muddappa* [7], the Hon'ble Supreme Court held that protection of the environment, open spaces for recreation and fresh air, playgrounds for children, promenade for the residents and other conveniences or amenities are matters of great public concern and of vital interest to be taken care of in a development scheme. The Hon'ble Court also held that public park as a place reserved for beauty and recreation... is associated with growth of the concept of equality and recognition of importance of common man... it is a gift from people to themselves. Its importance has multiplied with emphasis on environment and pollution.

Fundamental Freedom to Practice any Profession, Occupation, Trade or Business [(Article 19(1) (g)] and the Protection of Environment:

Article 19(1) (g) of the Constitution of India [8] provides that all citizens shall have the right to practice any profession, or to carry on any occupation, trade or business. Accordingly, in cases involving closure orders to the polluting industrial unit, the Hon'ble Courts face the task of balancing environmental imperative with the fundamental right to carry on any occupation, trade or business guaranteed under Article 19 (1) (g) of the Constitution.

In the case of *Abdul Hakim -vs- State* [9], the Hon'ble Supreme Court held that bull, bullock

or buffalo did not remain useful after it was 15 years old and whatever little use it may then have, was greatly offset by the economic disadvantage of feeding and maintaining unserviceable cattle.

In the case of *M. C. Mehta -vs- Union of India*, [10], the Hon'ble Supreme Court issued directions to set up effluent plants within six (6) months from the date of the order. It was specified that failure to do so would entail closure of business. Further, it was held that the tanning industries failed to establish primary treatment plant, and that order to stop functioning of the tanning industries should be passed.

Right to Life (Article 21) as the Right to a Wholesome Environment:

The most important **Article 21** of the Constitution of India deals with protection of life and personal liberty is in relation to the protection from environmental pollution. **Article 21** provides [11] that "No person shall be deprived of his life or personal liberty except according to procedure established by law".

In this Article 21, the concepts 'right to life', 'personal liberty' and 'procedure established by law' are contained, discussed in brief as below:

Right to Life

Life implies something for human being. The word 'life' in Article 21 of the Constitution means a life of dignity as a civilized human being and not just animal survival. The right to life embraces not only physical existence but the quality of life as understood in its richness and fullness by the ambit of the Constitution.

In the case of *Bandhua Mukti Morcha -vs- Union of India* [12], the Hon'ble Supreme Court held that the right to live with human dignity enshrined in Article 21 of the Constitution of India must include protection of health and strength of workers, men and women and of the tender age of the children against abuse, opportunities and facilities for the children to develop in a healthy manner and in condition of freedom and dignity,

educational facilities, just and human condition of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity.

Personal Liberty

According to Dicey, Personal liberty means a personal right not to be subjected to imprisonment, arrest or other physical coercion in any manner that does not admit of legal justification.

In the case of *A. K. Gopalan -vs- Union of India* [13], the Hon'ble Supreme Court said that only liberty relating to, or concerning the person or body of the individual and in this sense it was antithesis or physical restraint or coercion.

In the case of *Kharak Singh -vs- State of U.P.* [14], the Hon'ble Supreme Court held that the term 'personal liberty' is used in Article 21 as a compendious term to include within itself all the varieties of rights which goes to make up the 'personal liberties' of man other than those dealt with in several clauses of Article 19(1) of the Constitution.

In the case of *Maneka Gandhi -vs- Union of India* [15], the Hon'ble Supreme Court observed that the expression 'personal liberty' in Article 21 of the Constitution is of widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have raised to the status of distinct fundamental rights and given additional protection under Article 19 of the Constitution.

Procedure Established by Law

Law means State made law and it does not mean the rules of natural justice.

In the case of *M. S. M. Sharma -vs- S. K. Singh* [16], the Hon'ble Supreme Court held that procedure established by law means the procedure laid down by statute legislated by the Union or the State Legislature.

Article 21 of the Constitution of India is the heart of fundamental rights and has received

expanded meaning from time to time. Article 21 has both negative as well as positive dimensions. The use of negative words does not eliminate the positive right conferred by Article 21, such as right to live in healthy environment. It is an established fact that there exists a close link between life and environment. Particularly, if we talk fundamental rights, and right to life would become meaningless if there is no healthy environment. The judicial interpretation in various cases has made right to live in healthy environment.

In the case of *Rural Litigation and Entitlement Kendra, Dehradun -vs- State of U.P.* [17], the first indication of recognising by the Hon'ble Supreme Court that the right to live in healthy environment as a part of Article 21 of the Constitution of India.

In the case of *M. C. Mehta -vs- Union of India* [18], popularly known as *Oleum Gas Leakage Case*, the Hon'ble Supreme Court clearly treated the right to live in pollution free environment as a part of as a part of fundamental right under Article 21 of the Constitution of India.

In the case of *Subhas Kumar -vs- State of Bihar* [19], the Hon'ble Supreme Court held that right to live is a fundamental right under Article 21 of the Constitution of India and it includes the right of 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 determine to the quality of life.

In the case of *T. Damodhar Rao -vs- S. O. Municipal Corporation* [20], the Hon'ble Andhra Pradesh High Court declared that the enjoyment of life and its attainment and fulfilment guaranteed by Article 21 of the Constitution of India embraces the protection and preservation of nature's gifts without which life cannot be enjoyed.

In the case of *F. K. Hussain -vs- Union of India* [21], the Hon'ble Supreme Court held

that the right to sweet water and the right to free air, are attribute of the right to life under Article 21 of the Constitution of India, for, those are the basic elements which sustain life itself.

In the case of *Calcutta Youth Front -vs- State of West Bengal* [22], the Hon'ble Supreme Court contended that there must be a balance between ecology and development. Development is necessary for the human beings. At the same time no one should do harm or injury to the environment.

In the case of *M. C. Mehta -vs- Union of India* [23], popularly known as *Taj Trapezium Case*, the Hon'ble Supreme Court issued direction for shifting of 292 industries from the Taj Trapezium or to close them.

In the case of *Indian Council for Enviro-Legal Action -vs- Union of India* [24], the Hon'ble Supreme Court cautioned the industries discharging inherently dangerous Oleum and H acid. The Hon'ble Court held that such type of pollution infringes right to wholesome environment and ultimately right to life.

In the case of *M. C. Mehta -vs- Union of India* [25], the Hon'ble Supreme Court issued directions towards the closing of mechanical stone crushing activities in and around Delhi, which was declared by World Health Organisation (WHO) as the third most polluted city in the world. However, it realized the importance of stone crushing and issued directions for allotment of sites in the new 'crushing zone' set up at village Pali in the state of Haryana.

In the case of *Ishwar Singh -vs- State of Haryana* [26], the Hon'ble High Court issued the directions for closing down the stone crushing business of those which were not situated within the identified zone.

In the case of *V. Lakshmi pathy -vs- State* [27], the Hon'ble Karnataka High Court in public interest litigation directed the Municipal Corporation to stop the industries set up in the residential area. The Court also observed that

the land which is earmarked for residential purposes should not be used for setting up the industries.

In the case of *People United for Better Living in Calcutta -vs- State of West Bengal* [28], the Hon'ble Calcutta High Court held that it is the duty of the Court to find balance between development programme and environment. The Hon'ble High Court highlighted the importance of wet land and part played by it in the proper maintenance of environmental equilibrium in the city of Calcutta. It was further held that wetlands are important in maintenance of environmental equilibrium and necessary to preserve the environment.

In the case of *Charanlal Sahu -vs- Union of India* [29], the Hon'ble Supreme Court held that in the context of our national dimensions of human rights, right to life, liberty, pollution free air and water is guaranteed by the Constitution of India under Articles 21, 48-A and 51-A(g) and declared the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 valid.

In the case of *Murli S. Deora -vs- Union of India* [30], the Hon'ble Supreme Court directed the Union of India, State Governments as well as Union Territories to take steps to ensure prohibiting smoking in public places such as (i) Auditoriums, (ii) Hospital Buildings, (iii) Health Institutions; (iv) Educational Institutions; (v) Libraries; (vi) Court Buildings; (vii) Public Offices; and (viii) Public Conveyances, including Railways.

In the case of *Narmada Bachao Andolan -vs- Union of India* [31], the Hon'ble Supreme Court held that right to water is a fundamental right under Article 21 of the Constitution of India.

Directive Principles of State Policy and the Protection of Environment

Articles 37-51 of the Constitution of India has incorporated the Directive Principles of State Policy (DPSP). The Directive Principles represent the socio-economic goals which the nation is expected to achieve. Some of the

other important directives relate to provision of the protection and improvement of environment and safeguarding of forests and wildlife of the country.

Article 47 of the Constitution [32] requires that the State should endeavour to see the improvement of public health and it becomes an imperative duty of the State to see that the health of the people is not jeopardised and in a welfare State like India, the Government and the governmental agencies are responsible to look after the welfare of the people. The improvement of public health will also include the protection and improvement of environment without which public health cannot be assured.

Article 48-A of the Constitution added a new Directive Principle to the Constitution (42nd Amendment) Act, 1976 dealing specifically with protection and improvement of environment. Article 48-A provides [33] that “*the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country*”.

Thus, Indian Constitution became one of the rare constitutions of the world where specific provisions were incorporated in the *Suprema Lex* putting obligations on the “State” as well as “citizens” to “protect and improve” the environment. This certainly is a positive development of Indian law.

In the case of *M. C. Mehta (II) -vs- Union of India* [34], the Hon’ble Supreme Court gave directions to the Central and the State Governments and various local bodies and Boards under the various statutes to take appropriate steps for the prevention and control of pollution of water.

Fundamental Duties and the Protection of Environment:

Duty is an act which one ought to do; an act, the opposite of which would be a wrong. Duties can be both positive as well as negative. Legal duties entail legal sanctions when not discharged. Rights and duties are correlative. The fundamental duties are intended to serve a constant reminder to every

citizen that while the Constitution specifically conferred on them certain fundamental rights.

The Fundamental Duties of the citizen are incorporated in Article 51-A of the Constitution of India which inserted by the Constitution (42nd Amendment) Act, 1976. Article 51-A(g) of the Constitution specifically deals with the fundamental duty with respect to environment. Article 51-A(g) provides [35] that “It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures”. The fundamental duty imposed on every citizen is not only to “protect” the environment from any kind of pollution but also to “improve” the environment quality if it has been polluted.

In the case of *L. K. Koolwal -vs- State of Rajasthan* [36], the Hon’ble Rajasthan High Court observed that a citizens duty to protect the environment under Article 51-A(g) of the Constitution bestows upon the citizens the right to clean environment.

In the case of *K. Guruprasad -vs- State of Karnataka* [37], the Hon’ble Supreme Court declare that ‘environment and ecology’ are national assets. They are subject to inter-generational equity. Time has now come to suspend all mining in the area on sustainable development principle, which is a part of Articles 21, 48-A and 51-A(g) of the Constitution of India.

JUDICIAL CONTRIBUTIONS TO PROTECT AND IMPROVE THE LIVE IN HEALTHY AND POLLUTION FREE ENVIRONMENT IN INDIA

Environment problems is a burning problem now a days, the need of its protection is global issue. Industrialisation, urbanisation, population explosion, poverty, over exploitation of resource, depletion of traditional resource of energy and raw material etc. are some of the factors which have contributed to environmental deterioration the world over.

For the protection of environment from pollution and live in healthy environment, the Hon'ble Supreme Court and also various High Courts in India have taken invariable measures in a series of their landmark decisions. Over the years, the Hon'ble Supreme Court have been paying special attention for the protection of environment by giving effective directions to all persons concerned with the matters by invoking its power under Article 32 of the Constitution of India. In India, the law relating to environment has gained significant movement only through the Public Interest Litigation (PIL) by a public-spirited person. Today, the Public Interest Litigation is an instrument for sealing destruction of justice, when there is gross violation of environmental rights.

In the case of *State of Orissa -vs- Government of India* [38] the Hon'ble Supreme Court opined that the right to get water is a part of life guaranteed by Article 21 of the Constitution.

In the case of *Delhi Water Supply & Sewage Disposal Undertaking -vs- State of Haryana* [39], the Hon'ble Supreme Court held that right to life guaranteed in any civilized society, *inter alia*, right to water and descent environment. These are basic human rights known to any civilized society.

In the case of *Kinkri Devi -vs- State* [40], the Hon'ble High Court of Himachal Pradesh Relied on *Doon Valley Case* and pointed out that if a just balance is not struck between development and environment by proper tapping of natural resources, there will be violation of Articles 14, 21, 48-A and 51-A(g) of the Constitution of India. It is further observed by the Hon'ble Court that tapping has to be done with care so that ecology and environment may not be affected in any serious way.

CONCLUSION

Now a day's environment problems is a burning problems in all over the world and the needs to be taken care of as soon as possible not only for the environmental protection but

for the protection of mankind. In India the matter for environmental protection has not only been raised to the status of fundamental law but it is also wedded with human rights approach and it is now well established that it is the basic human right of every individual to live in pollution free environment with full human dignity. There are enough provisions to protect and improve the environment from pollution under the Indian Constitution, we have enough legislations for the protection and improvement of the environment from the pollution. Government has also taken various steps for the protection and improvement of the environment from the pollution. The Hon'ble Judiciary has also played an activist's role to protect and improve the environment from the pollution in a series of their landmark decisions. Only incorporating provisions and enacting various legislations would not solve the problem. These are to be implemented properly. If human civilization has to be protected from annihilation, pollution must be prevented. People must be aware, law abiding and environment friendly. In consonance with the spirit of the provisions of the Indian Constitution we must bear a solemn responsibility to protect and improve, promote and preserve the environment from the pollution for the well-being and safety for present generation to future generations.

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