

Fundamental Right to live in a Healthy Environment: constitutional and judicial outlook

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The right to live in a hygienic atmosphere is not a recent right invented by Environment Jurisprudence in India. This right has been recognized by ancient Indian scriptures in the form of Vedas, Dharam- Sastras and Granthas under various religions. The only difference in the enjoyment of the right to live in a clean and healthy environment in the 21st century is that it has attained the status of a fundamental right the violation of which, the Constitution of India will not permit. Prior to this period, as pointed out earlier the people of this country has enjoyed this right- Not as a constitutionally guaranteed fundamental right but a right recognized and enforced by the courts of law under different laws, like Law of Torts, the *Indian Penal Code*, 1860, the *Civil Procedure Code*, 1908, the *Criminal Procedure Code*, 1973 etc. This article will focus on two issues: (a) Provisions on fundamental right to live in a healthy environment in the Constitution of India and (b) Attitude of Indian judiciary in the preservation of this right. The research questions on which the researcher seeks to write are: (1) How far the provisions of Indian Constitution relevant to ensure this right? And; (2) Whether Indian judiciary is pro-active in the conservation of environment? Concluding remarks of this article would cover the suggestions on the path of preservation of the environment.

Key Words: *Fundamental Right, Live in Healthy Environment, Indian Judiciary on Environment*

1. Introduction

“If I were to name the three most precious resources of life, I should say books, friends, and nature; and the greatest of these, at least the most constant and always at hand, is nature.”

John Burroughs quotes^[1]

In today's emerging jurisprudence, environmental rights, which encompass a group of collective rights, are described as “Third Generation Rights”.^[2] The right to live in a clean and healthy environment is one of the very cherished sources of life. The privilege to live in a perfect and sound condition isn't a current right imagined by the higher legal in India. This privilege has been perceived by the lawful framework and by the legal specifically for over a century or thereabouts. The main distinction in the satisfaction is that it has achieved the status of a basic right the infringement of which, the Constitution of India won't allow. It was just from the late eighties and from there on different High Courts and the Supreme Court of India have assigned this perfectly fine central right. Before this period, as pointed out prior the general population of this

nation has delighted in this right. Not as a constitutionally guaranteed fundamental right but a right recognized and enforced by the courts of law under different laws, like Law of Torts, the *Indian Penal Code*, 1860, the *Civil Procedure Code*, 1908, the *Criminal Procedure Code*, 1973 etc.[3]

2. Constitutional Provisions and Environment Protection in India

In India, from time to time various laws for the protection of environment, flora and fauna have been enacted.[4] However, the Indian Constitution is perhaps the first Constitution in the world which contains specific provisions for the protection and improvement of the environment. It reflects the human rights approach to environmental protection through various constitutional mandates.[5]

2.1 Preamble of the Indian Constitution

The preamble is key to open the minds of the founding fathers of our Constitution. The preamble of the Constitution of India provides that our country is based on “Socialistic”[6] pattern of society where the State pays more attention to the social problems than on any individual problems. The basic aim of socialism is to provide “decent standard of life to all”, which can be possible only in a pollution free environment.

2.2 Fundamental Duty to Protect and Improve Natural Environment: Part IV-A [Article 51-A (g)]

The *Constitution (Forty-Second Amendment) Act*, 1976, added a new Part IV-dealing with “Fundamental Duties” in the Constitution of India.[7] Article 51-A of this Part enlists ten fundamental duties. It is interesting to note that this Part was added on the recommendations of the *Swarn Singh Committee* bringing the Constitution of India in line with Article 29(1) of the Universal Declaration of Human Rights.[8] Article 51-A (g) specifically deals with the fundamental duty with respect to the environment. It provides:

“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.”

Article 51-A (j) further provides:

“It shall be the duty of every citizen of India to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievements.”

The fundamental duties are intended to promote peoples' participation in restructuring and building a welfare society. The protection of the environment is a matter of constitutional priority. The problem is the concern of every citizen. Neglect of it is an invitation of disaster.[9]

The true scope of Article 51-A (g) has been best explained by the Rajasthan High Court in *L.K. Koolwal v. State*.[10] The brief facts of this case were that the Municipal authority under the *Rajasthan Municipalities Act*, 1959, was charged with “primary duty” to clean public streets, places and sewers and all spaces, not being private property, which are open to the enjoyment of public, removing of noxious vegetation and all public nuisance, and to remove filth, rubbish, night soil, odour or any other noxious or offensive matter. Mr. L.K. Koolwal moved the High Court under Article 226 (writ jurisdiction) and highlighted that the Municipality has failed to discharge its “primary duty” resulting in the acute sanitation problem in Jaipur which is hazardous to the life of the citizens of Jaipur.

The Court allowed the petition and explained the true scope of Article 51-A in the following terms:

“We can call Article 51-A ordinarily as the duty of the citizens, but in fact it is the *right* of the citizens as it *creates the right* in favour of citizens to move to the Court to see that the State performs its duties faithfully and the obligatory and primary duties are performed in accordance with the law of the land. Omissions or commissions are brought to the notice of the Court by the citizen and thus, Article 51-A gives a right to the citizens to move the Court for the enforcement of the duty cast on State, instrumentalities, agencies, departments, local bodies and statutory authorities created under the particular law of the State.”[11]

The Court also pointed out that “Right and duty co-exist. There cannot be any right without any duty and there cannot be any duty without any right”.

2.3 Directive Principles of State Policy in Context of Environment

Part IV of the Constitution deals with the Directive Principles of State Policy. These Directive Principles represent the socio-economic goals which the nation is expected to achieve. These directive principles are designed to guide the destiny of the nation by obligating three wings of the State, i.e., Legislature, Judicature and Executive to implement these principles.

Article 47 of the Constitution is one of the Directive Principles of State Policy and it provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its *primary duties*. The improvement of public health will also include the protection and improvement of environment without which public health cannot be assured.

The *Constitution (Forty-Second Amendment) Act, 1976*, added a new Directive Principle in Article 48-A dealing specifically with protection and improvement of environment. It provides:

The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.[12]

Article 37 of the Constitution provides:

“The provisions contained in this Part (Part IV) shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws. (emphasis supplied).”

In view of Article 137 of the Constitution, the Court may not be able to actively enforce the directive principles by compelling the State to apply them in the making of law. The Court can, if the State commits a breach of its duty by acting contrary to these directive principles, prevent it from doing so. The non-enforceable nature of the directive principles does not preclude the judiciary from declaring any law unconstitutional which is in violation of the directive principles.[13] The directive principles now stand elevated to inalienable fundamental human rights. Even they are justiciable by themselves.[14]

In India, the judicial attitude in protecting and improving the environment provides a testimony of the fact that directive principles are not mere “guiding principles” of policy but they have to be given effect to.

In *Shri Sachidanand Pandey v. the State of W.B.*,[15] the Supreme Court pointed out that whenever a problem of ecology is brought before the Court, the Court is bound to bear in mind Articles 48-A and 51-A(g) of the Constitution. The Court further observed:

“When the Court is called upon to give effect to the Directive Principles and the fundamental duty, (Articles 48-A and 51-A(g) in this case), the Court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy making authority. The least the Court may do is to examine whether appropriate consideration are borne in mind and irrelevancies excluded. In appropriate cases, the Court may go further, but how much further must depend on the circumstances of the case. The Court may always give necessary directions. However, the Court will not attempt to nicely balance relevant considerations. When the question involves the nice balancing of relevant consideration, the Court may feel justified in resigning itself to acceptance of the decision of the concerned authority.”[16]

In *M.C. Mehta v. Union of India*,[17] (popularly known as CNG case) the Court observed that Articles 39(e), 47 and 48-A by themselves and collectively cast a duty on the State to secure the health of the people, improve public health and protect and improve the environment.

2.4 *Status of Fundamental Rights v Right to Live in Healthy Environment as Unremunerated Right in Indian Constitution*

In order to treat a right as a fundamental right, it is not necessary that it should be expressly stated as one in Part III of the Constitution dealing with fundamental rights. The provisions of Parts III and IV, dealing with fundamental rights and directive principles respectively, are supplementary and completer to each other. Fundamental rights are but means to achieve the goal indicated in Part IV and thus must be construed in the light of the directive principles.[18] A right can be recognized as a complementary right even though not expressly mentioned in Part III. In other words, there are various unremunerated fundamental rights in Part III and judicial activism in India has taken a lead in interpreting various unremunerated rights in Part III of the Constitution.[19] Environment protection is one of them. In spite of the fact that particular arrangements are found in the Directive Principles (Part IV) and Fundamental Duties (Part IV-A), yet ideal to live in a sound situation has been deciphered by the legal into different arrangements of Part III managing 'Fundamental Rights'. In this way, the legal in India has given a stimulus to the Human Rights approach for the assurance of condition.

3.

4. **Article 21 and Right to Live in a Healthy Environment: Judicial Outlook**

Article 21 is "the heart of fundamental rights" and its scope has been has expanded from time to time and right to live in a healthy environment, is also interpreted in it. For healthy existence and preservation of the essential ingredients of life, stable ecological balance is required. Article 21 guarantees a fundamental right to life - a life of dignity, to be lived in a proper environment, free of the danger of disease and infection. It is an established fact that there exists a close link between life and environment. The talk of fundamental rights and, in particular, right to life would become meaningless if there is no healthy environment.[20] The judicial grammar of interpretation has made "right to live in a healthy environment" as the *sanctum sanctorum* of Human Rights.

The first indication of recognizing the right to live in healthy environment as a part of Article 21 was evident from the case of R.L. and *E. Kendra, Dehradun v. State of U.P.*[21] In this case, For this situation, the Rural Litigation and Entitlement Kendra, Dehradun and a gathering of nationals kept in touch with the Supreme Court against the dynamic mining which bared the Missouri Hills of trees and timberland cover and quickened soil disintegration bringing about avalanches and blockage of underground water channels which nourished numerous waterways and springs in the valley. The Court requested the registry to regard the letter as writ appeal to under Article 32 of the Constitution (epistolary jurisdiction).

In *Narmada Bachoo Andolan v. Union of India*[22] (2000) the Supreme Court of India declared that "water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Article 21 of the Constitution of India. It is a matter of great concern that even after half a century of freedom, water is not available to all citizens even for their basic drinking necessity violating human right resolution of UNO and Article 21 of the Constitution of India". This case was filed by an NGO against the environmental clearance given by the Government for construction of the Sardar Sarovar Dam across the Narmada River.

The Supreme Court in *T.N. Godavarman Thirumalpad v. Union of India*[23] held that right to life guaranteed in Article 21 of the Constitution of India includes a right to an environment adequate for health and wellbeing.

In this case, it was alleged that mining activities were adversely affecting the flora and fauna in and around Kudremukh National Park, a part of the West Ghats.

In *Ranji Patel v. Nagrik Upbhokta Marg Darshak Manch*, the Supreme Court drew a nexus between the protection of the environment and Article 21 of the Constitution. It held that “any disturbance of the basic environmental elements, namely, air, water and soil, which are necessary for “life” would be hazardous to “life” within the meaning of Article 21 of the Constitution.

In *State of M.P. v. Kedia Leather and Liquor Limited*^[24] (2003), the Supreme Court held that “Environmental, ecological, air and water pollution amount to a violation of the right to the life assured by Article 21 of the Constitution of India. The hygienic environment is an integral facet of healthy life. Right to live with human dignity becomes illusory in the absence of humane and healthy environment”. This is a case where the Sub-Divisional Magistrate of the area concerned served orders in terms of Section 133 of the Criminal Procedure Code directing the respondents who owned industrial units to close their industries on the allegation that serious pollution was created by the discharge of effluents from their respective factories and thereby a public nuisance was caused.

4. Conclusion

In a developing nation like India, ecological issues continue emerging. It has a conspicuous place in our Constitution which; is grundnorm of the entire lawful arrangement of India. It implies there can be no law, tenets or directions which can conflict with infringement of this privilege to a solid condition. The choices of courts have augmented the extent of the privilege to life by perusing into it, the privilege to a perfect situation and setting out that security and change of nature is an order to each organization, open or private, and individual, to be followed in all circles of their exercises. Our Supreme Court has connected 'The Polluter Pays Principle' and 'Precautionary Principle'; which are the establishment of Sustainable Development. The courts in India have, along these lines, satisfied the need of great importance, and have made huge commitments in developing new standards and cures in the field of natural security.

Along with efforts of Law and Courts; We, the people of India should not forget our responsibilities. Being environmental friendly we can change the destiny of our country. The fault lies with our old age belief system and customs. In the name of religion, people pollute rivers, water resources and water bodies. In the name of development, new experiments and construction are demolishing the beauty of nature. Yes, the right to live in a healthy environment is a fundamental right, however, the absolute responsibility lies on our shoulders to keep this beauty as it is gifted us by the Creator of Cosmos.

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- [3] S. Shanthakumar, *Introduction to Environmental Law*, Second Edition, 2005, (Reprint 2008), Wadhwa & Company, Nagpur, p. 91.
- [4] For example: The Wild Life (Protection) Act, 1972, The Water (Prevention and Control of Pollution) Act. 1974; The Air (Prevention and Control of Pollution) Act, 1981; The Forest (Conservation) Act, 1980; The Environment (Protection) Act, 1986; The Public Liability Insurance Act, 1991; The National Environment Tribunal Act, 1995; The National Environment Appellate Authority Act, 1997.
- [5] P.S. Jaswal, *Environmental Law: Environment Protection, Sustainable Development And The Law*, Second Edition, 2003, (Reprint 2005), Pioneer Publications, Delhi, p.36.

[6] The word “Socialist” was added to the preamble by the Constitution (Forty-second Amendment) Act, 1976, vide section 2 (w.e.f. 3-1-1977). However the “Socialism” has always been the goal of Indian Constitution, even prior to the amendment of 1976, as it is evident from the directive principles of state policy. Also see *Sanjeev Coke Mfg. Co. v. Union of India*, A.I.R. 1983 S.C. 239 at 251; *Excel Wear v. Union of India*, A.I.R. 1979 S.C. 25 at 36 and *D.S. Nakara v. Union of India*, A.I.R. 1983 S.C. 130 at 139; *Consumer Education and Research Centre v. Union of India*, A.I.R. 1995 S.C. 922 at 938-939.

[7] Section 11 of the *Constitution (Forty-Second Amendment) Act*, 1976, (w.e.f. 3-1-1977).

[8] Article 29(1) of the Universal Declaration of Human Rights provides: “Everyone has duties to the community in which alone the free and full development of his personality is possible”.

[9] *V. Lakshmipathy v. State*, A.I.R. 1992 Kant. 75 at 66.

[10] *id.*

[11] *Ibid.*, at 4.

[12] Inserted by the *Constitution (Forty-second Amendment) Act*, 1976.

[13] See: *Central Inland Water Transport Corporation v. Brojo Nath*, A.I.R. 1986 S.C. 1571 at 1587.

[14] *Air India Statutory Corporation v. United India Labour Union*, (1997) 9 SCC 377 at 416.

[15] A.I.R. 1987 S.C. 1109.

[16] *Shri Sachidanand Pandey v. State of W. B*, A.I.R. 1987 S.C. 1109, 1115.

[17] (2002) 4 S.C.C. 356.

[18] See *Unni Krishnan v. State of A.P.*, (1993) 1 SCC 645 at 730.

[19] For Example, The Right To Free Legal Assistance Was Recognized In *Khatri v. State Of Bihar*, A.I.R. 1981 S.C. 928; The Right Of The Prisoners To Be Treated With Human Dignity Was Recognized In *Charles Sobraj v. Superintendent Central Jail, Tihar*, A.I.R. 1978 S.C. 1514; Right To Live With Human Dignity, Free From Exploitation Was Recognized In *Bandhua Mukti Morcha v. Union of India*, A.I.R. 1984 S.C. 8.2; Right To Livelihood Was Considered A Part Of Right To Life In *Olga Tellis v. Bombay Municipal Corporation*, A.I.R. 1986 S.C. 180 And Now Right To Education Has Been Considered To Flow From Right To Life In *Unni Krishnan v. State of A.P.* (1993) 1 SCC 645. See Also Article 21-A.

[20] Paramjit S. Jaswal, “Development in Environmental Law: The Case of India”. *Proceedings of the Workshop on Development and Planning*, Vol. II, SOAS, the Centre for Asia and Africa, University of London, London (January 6th to 18th, 1992).

[21] A.I.R. 1985 S.C. 652 (Popularly known as Doon Valley Case), See also, *R.L. and E. Kendra, Dehradun v. State of U.P.*, A.I.R. 1985 S.C. 1259; *R.L. and E. Kendra, Dehradun v. State of U.P.*, A.I.R. 1987 S.C. 359; *R.L. and E. Kendra, Dehradun v. State of U.P.*, A.I.R. 1988 S.C. 2187; *R.L. and E. Kendra, Dehradun v. State of U.P.*, A.I.R. 1991 S.C. 2216 and *Kinkri Devi v. State*, A.I.R. 1988 H.P. 4.

[22]. Judgement dated 18-10-2000 in W.P. No. 319 of 1994.

[23].(2000) 10 SCC 606.

[24]. (2003) 7 SCC 389.