



RIGHT TO HEALTHY ENVIRONMENT IN INDIA: A JUDICIAL PERSPECTIVE

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Abstract

Environment and environmental rights, play a fundamental role in human life and also help in developing the values for the protection of environment. Entire life on the earth can survive with the protection and improvement of the environment and in this way right to environment has emerged as a human right. The Supreme Court and the High Courts in India have played a distinguishing role in expanding the scope of a meaningful life by applying various issues of environmental protection, resulting to that the activities posing threat to the natural resources were shortened. The judiciary in exercising the power of judicial review and developing the concept of judicial activism and by using the weapon of PIL have protected the individual's inherent right to wholesome environment as a fundamental right under Art. 21 of the Indian Constitution. Art. 21 has been trusted in a number of cases as a great tool by way of interpretation, and specifically certain cases have given a wider perspective of the Right to life. The right to live in healthy environment, including right to clean and safe drinking water, fresh and clean air etc., is continuing to gain recognition. This paper tries to discuss diverse ingredients of Indian environmental jurisprudence. Analytical method of research has been followed in this piece of research. Focus has also been given on the judicial experiences in the development of right to healthy environment as a fundamental right under Art. 21. The efforts of various scholars and researchers are also in purview of this work.

Keywords: *Environment, Jurisprudence, Right to healthy environment, Right to life.*



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Introduction

The constitution of India has an intricate Preamble, with a purpose to clarify the intention of the constitution framers. The Preamble of the Constitution and the Fundamental Right to life in Art. 21 weight the value of human dignity. Art. 21 speaks about the Protection of Life and Personal Liberty, as “No person shall be deprived of his life or personal liberty except according to procedure established by law”. The expression ‘life’ The Apex Court recognizing the essence of the Constitution and the Fundamental Right to life enunciated the importance of healthy environment as a Fundamental Right. Environmental Protection and Environmental rights are the watch words of the late 20th Century but during the last three decades, there has been an increasing concern for and awareness towards environmental protection and rights at the national and international level. In a series of cases dealing with the substantive content of the right to life the Supreme Court declared that the right to live with human dignity includes the right to healthy environment. The Constitution of India guarantees the right to life under Art. 21. The Supreme Court of India started expanding Art. 21 to include with it and recognize a whole gamut of social rights including right to life, right to pollution-free environment, and right to sustainable development. Health is closely related to life of human being. Good environment leads to good health which is very essence of right to life. The judicial craftsmanship expanded the reach and ambit of Art. 21 rather than accentuate their meaning and content by judicial construction. The judiciary broadened the concept of life, extended the scope of personal liberty so as to include in it various other rights. Thus right to healthy environment is recognized under Art. 21 by expanding the meaning of right to life.

Directive Principles and Healthy Environment

In the Directive Principles of the Constitution, Art. 47 declares that “the state regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among primary duties”. Art. 38, Art. 39(e), Art. 41, Art. 48(a), of the Directive Principles also forms the base for the genesis of right to healthy environment.

Judicial Pronouncements regarding Healthy Environment

Emerging from Maneka Gandhi’s case the Supreme Court started expanding the horizons of the right to life in Art. 21 to include within it and recognize a whole gamut of human rights. The right to healthy environment has been articulated and recognized as an integral part of the right to life only from the mid-nineties by the Indian Supreme Court. The right to healthy environment

is recognized by the Supreme Court through different petitions and public interest litigations. In cases related to health like PILs concerning worker's health hazards, petitions filed by individuals seeking rights of emergency medical care and HIV issues and PILs for banning smoking in public spaces, the Supreme Court has carved out a right to healthy environment within Art.21. Thus the scope of the right to healthy environment has also been very broad encompassing different aspects of health care and services. A pollution-free environment as a fundamental right presupposes right to health as a fundamental right. The right to healthy, clean and pollution-free environment has its origin in the human right to health, because in order to have a healthy body one needs clean environment. In *Municipal Council, Ratlam v. Vardhichand and Ors.*, the municipal corporation was prosecuted by some citizens for not clearing up the garbage. The corporation took up the plea that it did not have money. While rejecting the plea, the Supreme Court through Justice Krishna Iyer observed: "The State will realize that Art. 47 makes it a paramount principle of governance that steps are taken for the improvement of public health and environment as amongst its primary duties." In the light of Art. 22 to 25 of the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights in the light of socio-economic justice assured in our Constitution, right to health is a fundamental human right. The maintenance of health is a most imperative constitutional goal whose realization requires interaction by many social and economic factors. Health is life's grace and efforts are to be made to sustain the same. Environmental pollution is linked to health and is a violation of right to life with dignity. In 1988 in *M. C. Mehta v. Union of India* the Supreme Court of India, while giving due importance to the protection of the environment and having regard to the grave consequences of the pollution of water and air and the need for the fundamental duties under the Constitution, expressed the view that it is the duty of the Central Government to direct all the educational institutions throughout India to teach atleast for one hour in a week lessons relating to the protection and the improvement of the natural environment including forests, lakes, rivers and wild life. In 1998, in the case of *T. Ramakrishna Rao v. Hyderabad development Authority*, the Andhra Pradesh High Court said that the "Protection of the environment is not only the duty of the citizens but also the obligation of the state and it's all other organs including the courts". The slow poisoning of the atmosphere caused the environmental pollution should be regarded as amounting to violation of right to life under Art. 21 of the Constitution and also the escaping the liability on the part of

State. In 1987, in the case of T. Damodar Rao and others v. Special Officer, Municipal Corporation of Hyderabad, the High Court of Andhra Pradesh had observed that “it is the legitimate duty of courts as the enforcing organs of the constitutional objectives to forbid all actions of the state and the citizens from upsetting the ecological and environmental balance”. In 1995 in the case of Virender Gaur v. State of Haryana, the Supreme Court observed that “environmental, ecological, air and water pollution etc. should be regarded as amounting to violation of right of health guaranteed via interpretation of Right to life under Art. 21 of the Constitution. In the year of 1995 in the case of Consumer Education and Research Centre v. Union of India, and in the year 1996 in case of Kirloskar Brothers Ltd. v. Employees State Insurance Corporation, the Apex Court of India has observe that “the right to health and medical care is a fundamental right under Art. 21 read with Art. 39 (e), 41 and 43”. The Supreme Court in the case of Subhash Kumar v. State of Bihar, held that the right to pollution-free water and air is an enforceable fundamental right guaranteed in the purview of right to life under Art. 21 of the Constitution. Similarly in M.C. Mehta v. Union of India, Rural Litigation and Entitlement Kendra v. State of U.P., the Supreme Court imposed a positive obligation upon the State to take steps for ensuring to the individual a better enjoyment of life and dignity and for elimination of water and air pollution. In Vincent Panikurlangara v. Union of India, and also in Unnikrishnan, J. P. v. State of A.P., the Supreme Court held that the maintenance and improvement of public health is the duty of the State to fulfil its constitutional obligations cast on it under Art. 21.

The Supreme Court in Paschim Banga Khet Mazdoor Samiti and others v. State of West Bengal, held that the Constitution envisages the establishment of a welfare state at the federal level as well as at the state level. In a welfare state the primary duty of the Government is to secure the welfare of the people. Art. 21 imposes an obligation on the State to safeguard the right to life of every person. In Murali Deora v. Union of India and others, the Supreme Court prohibited smoking in public places in the entire country on the ground that it is injurious to health and issued directions to the Union of India, State Governments as well as union Territories to take effective steps to ensure prohibiting smoking in all public places. In M.C. Mehta V. Union of India and others the Supreme Court taking into consideration the increasing pollution level in New Delhi due to diesel emission directed all non-commercial vehicles to conform to Euro-II norms within a specified time period as it violate the right to life and health of the citizens.

Conclusion

The journey of the rights to life under Art. 21 has been started with the interpretation by the Apex court and over the time the court has expensively interpreted the meaning of word 'life'. The same right and its expansions are on the way of development. The areas covered under the expansions are the fair trial, speedy trial, long pre-trial confinement, bail, legal aid, medical aid and the pollution free environment. The analysis of the right of healthy environment mission of the courts has been undertaken in order to explicate the development of ideology of healthy environment as being part of the right to life in the Indian context. It is evident and proved with reference to a number of decisions in the cases decided by the Supreme Court and various High Courts, that right to healthy environment is comprised under Art. 21 of the Constitution. Such wide and meaningful interpretations of Art. 21 by the courts have over the years become the bedrock of environmental jurisprudence in India.

References

- Bentham, J., 1948. Introduction of Morals and Legislation. Oxford: Basil Blackwell.
- Rishi, P., 2009. Environmental Issues- Behavioral Insights (Edt.) New Delhi: Rawat Publication.
- Agarwal, A., 1999. Global Environmental Negotiations. Vol.1, Green Politics. New Delhi: Centre for Science and Environment.
- Kumar, A., 2009. Environmental Ethics. New Delhi: Shree Publishers and Distributers.
- Joseph, B., 2009. Environmental Studies (Second Edn.). New Delhi: Tata McGraw Hill Education Private Limited.
- Ghai, 2011. Environmental Ethics and Philosophy. New Delhi: Cyber Tech Publication.
- Ganesamurthy, V. S., 2011. Environmental Status and Policy in India. New Delhi: new Century Publications.
- Jain, M.P. 2007. Indian Constitutional Law. Delhi: Wadhwa Nagpur.
- Indian Journal of International Law.
- Journal of the Indian Law Institute.
- Journal of Constitutional & Parliamentary Studies.
- Environment & Forest Law Times.
- Legal News & View.
- Legal Era Magazine.
- Indian Bar Review.