

A STUDY ON RIGHT TO LIVE IN A CLEAN ENVIRONMENT IS A FUNDAMENTAL RIGHT IN INDIA

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Abstract

“There can be no greater need for any of us than a clean environment- clean air, clean water, clean soil and food” - DAVID SUZUKI

The quality of life depends upon the quality of environment. Thus, the right of the people to live in clean and healthy environment is a basic fundamental right of human being, life with minimum disturbance of ecology balance and without avoidable hazard to them and to their cattle, house and agricultural land and undue affection of air, water and environment are certainly important.

The Stockholm Conference held in the year 1972 highlights in its first principle;

“Man had the fundamental right to adequate condition of life, in an environment of a quality that permitted a life of dignity and well being.”

After judicial activism and intervention the right to live in a pollution free environment has been recognised as a fundamental right under Article 21 of the Indian Constitution in India. Various laws thereafter made by the legislature to provide clean environment to the citizens in protecting the environment. The role of NGOs also has special mention in protection and in proving the rich quality of clean environment. But, irrespective of all the efforts made by the legislature and the judiciary and others many people do not have access to clean air and pure drinking water due to degradation of environment.

This study puts forths the various facets of key changes made by the judiciary in making the right to clean environment as a fundamental right.

Keywords: Mankind, Ecology, balanced, Environment, clean, healthy, quality, life, fundamental right, judiciary, legislative and NGOs.

Introduction

The Environment (Protection) Act, 1986 which in section 2(a) defines it as: Environment includes water, air and land and interrelationship which exists among and between water, air and land and human beings, other living creatures, plants, microorganism and property.

The right to a clean environment is fundamental. It is both dependent upon and a precondition to a number of other human rights, including civil, political, economic, social, and cultural rights. For instance, preservation, conservation, and the restoration of environment are necessary for full enjoyment of the rights to food, health, and to a dignified life. Right to a clean environment is not a purely an individual right. But, it in collective belong equally to such groups for future generations and indigenou peoples those cultures depending on the environment for their existence and also on perpetuation.

The problems of the surroundings are not any longer being viewed completely from the angle of the pollution touching the industrialised countries however seen rather as a worldwide hazard-threatening the earth and therefore the whole of humanity, still as future generations. the belief of the worldwide character of environmental issues is genuine by the progress created in understanding the phenomena that make hazards for the earth, threaten the living condition of people in general and impair their elementary rights. These phenomena concern not solely the natural surroundings (the pollution of water, air, and atmosphere, seas, oceans and rivers; depletion of gas layer; climatic changes) and natural resources (desertification, deforestation, soil erosion, disappearance of bound species; deterioration of flora and fauna, exhaustion of non-renewable resources, etc.) however additionally population and human settlements (housing, city planning, demography, etc.) and therefore the rights of people in general (the human surroundings, living, operating and health conditions; conditions for his or her exercise and therefore the enjoyment of basic rights).

Aim of the Study

This study focuses on the law of land in guaranteeing the right to clean environment as a fundamental right, qualitative life being possible.

Objectives

- To find out clean environment mission adopted by the Indian government
- To analysis on constitution of India and international perspective on clean environment
- To elucidate the judicial position in India on clean environment

Research question:

Whether polluted environment is derogating the fundamental rights conferred by law?

Hypothesis:

The qualitative life is only possible in an environment of quality.

Research methodology

The researcher has followed an Doctrinal research method. Have refereed primary sources like bare acts, case laws, etc. and secondary sources like books, magazines, articles, journals, web links, etc.

Clean environment as a fundamental right-**History and New trends:**

Both the quotes below highlights that people having cutting down the trees and contaminating the waste in forest degraded the forest and now in cities build with closed window homes searching for environmental place and its cleanliness, protection and so on;

“The earth is 4.6 billion years old. Let we scale that to 46 years. We have been here for 4 yours. Our industrial revolution has begun 1 minute ago. In that time we have destroyed more than 65% of our world forest.”

“Imagine if trees gave off wifi signals, we would be planting so many trees and we would have probably saved our planet. Too bad trees only produce oxygen and breadth.”

Lets hope it won't happen that, 'tomorrow somebody says, I have invented a machine to produce oxygen after cutting down the trees and drilling clean energy from dry land'.¹

Constitutional right of clean environment:

In the realm of the basic rights the foremost essential right is that the right of life secured by Article 21 of the Indian Constitution,[\(Nevondwe and Odeku 2013\)](#) that the article says that can't be removed settle for consistent with procedure established by law. To safeguard this right and alternative basic rights we tend to do have a awfully special feature within the Constitution of India called right to constitutional remedies.²

Article 32 of the constitution empowers the supreme court in an applicable continuing to issue not solely legal document of writ of mandamus, certiorari, prohibition or quo warranto however conjointly the other direction, order or legal document for the social control of elementary rights. an equivalent power is unconditional within the High Courts below Article 226 of the Constitution. it's upon the exercise of this power of review the Courts area unit referred to as upon to come to a decision whether or not any instrumentality, agency or organs of the state has transgressed or exceeded the boundaries of power bestowed upon it and to confirm that the state and therefore the public officers fulfill the duty of the Constitution and therefore the law below that they exist and performance.[\(Nevondwe and Odeku 2013; Fitzmaurice 2016\)](#)

The six fundamental rights of Indian citizens are specified in Articles 14-32 of the Indian Constitution such as right to equality (Articles 14-18), right to freedom (Articles 19-22), right against exploitation (Articles 23-24), right to freedom of religion (Articles 25-28), cultural and educational rights (Articles 29-31) and right to Constitutional remedies (Article 32). There are four Constitutional provisions that are directly relevant to protect the fundamental rights of citizens. Under Article 13, the Court is granted power to judicially review legislation, so that the laws inconsistent with the fundamental rights may be held void. In addition, Article 32 confers on every citizen the Court's original jurisdiction for the enforcement of his or her fundamental rights. Through this provision, individuals can approach the Court to seek the protection of their

¹ Nimushakavi, "Constitutional policy and environmental jurisprudence in India", Macmillan India Ltd, 2006.

² Dr. G. P. Verma, "Human rights to pollution free clean and healthy environment- constitutionalperspective", 1st Ed, Bharat law publication, 2007.

fundamental rights. Under Article 136, the Supreme Court has discretionary power to grant special leave to appeal from any judicial order, judgment, or decree in the land thereby providing another route for judicial review.

The earliest understanding of these provisions had been a narrow procedural one where fundamental rights and other Constitutional provisions were interpreted as procedure established by law. Moreover, inconvenient Court decisions on the Constitutionality of state action were simply overturned by amending the Constitution until the 'basic structure' of the Constitution was declared unalterable.

Further to chapter on primary rights, the charter of india incorporates a chapter on directive concepts of state coverage, that emphasize in amplification of the preamble, that the intention of indian polity isn't always laissez faire, however state, anywhere the country has advantageous duty to affirm to its citizens social and financial justice and dignity of the person.³ According to Article 48A of the Directive Principles, the State ought to try to safeguard and improve the surroundings and to safeguard forests and life. Article 51A(g) of part IV-A of basic Duties states that it shall be the duty of each national of Indian to safeguard and improve the natural surroundings.[\(Nevondwe and Odeku 2013; Fitzmaurice 2016; Human rights and the environment — ri...\)](#)

Life suggests that to measure with human dignity however if one cannot breath clean air, have safe potable or food, the all human rights civil, political, social or economic square measure unmeaning. because of appalling state of affairs of the environmental pollution in our country the supreme court sharpened its tools and methods throughout mid-80's and 90's by keeping aside all technical rules of procedure and liberalised the rule of 'locus standi' so as to alleviate the sufferings of the victims of environmental pollution below the banner of Public Interest Litigation (PIL).

The courts have given expanded interpretation to Article twenty one regarding the proper to life to incorporate all those rights that square measure essential and basic for the enjoyment of the standard of life free from environmental pollution and alternative health and shopper hazards.

³ D.D. Bassu, Introduction to the Constitution of India, New Delhi, Prentice-Hall of India Pvt. Ltd., 1994.

Environmental policies by government-**Environmental Goals:**

“Cleaning and organising is a practise not a project”

We or government set up goals to save environment but not mandated how such goals to be implemented.

Swachh Bharat Campaign- launched by the Prime Minister Narendra Modi with an aim to make India clean. This aim is to provide for sanitation facilities to every families, including toilets, village cleanliness, solid and liquid waste disposal systems and safe and adequate drinking water supply by 2nd October, 2019. This will be a befitting tribute to the Father of the Nation on his 150th birth anniversary.[\(Manisha 2015\)](#) also, it's been truly declared that the marketing campaign is not handiest the responsibility of the authorities but each citizen of the us is similarly responsible to keep the country smooth or swachh.

International perspective:**1. World Conference on Human Rights:**

The world conference on Human Rights, held at Vienna from 14 to 25 June 1993, solemnly adopted the Vienna Declaration and Programme of Action containing 142 paragraphs on numerous aspects of human rights. it's value quoting those directly relating to the correct to development and atmosphere. Part I, paragraphs 10 and 11 states as follows:⁴

Para 10- speaks that the Conference on Human Rights reaffirms to development, as established within the declaration, as a universal and inalienable right and an integral a part of elementary human rights. As explicit within the Declaration on the correct to Development, the human person is that the central subject of development. The international community ought to promote a good international cooperation for the belief of the correct to development and therefore the elimination of obstacles to development. Lasting development toward the implementation of the best to improvement wishes effective improvement rules on the national level, moreover as equitable financial members of the family and beneficial monetary environment at the worldwide level.

⁴ Earth summit, Agenda 21, UN program of action from Rio, UN publication, 1993.

Para 11- speaks that improvement must be consummated consequently on meet equitably the organic manner and environmental desires of gift and destiny generations. the planet conference on human rights recognizes that illicit advertising and marketing of nephrotoxic and perilous materials and waste doubtless constitutes a heavy chance to the human rights to life and health of all and sundry. consequently the planet conference on human rights calls on all states to adopt and neatly enforce current conventions regarding the advertising of nephrotoxic and threatening merchandise and waste and to sign up for forces in the issue of illicit advertising and marketing.

2. United Nations Environment Programme:

The UNEP is a very important agency, addressing the environmental problems. it's contributed to the event of international pointers, recommendations and norms approved by the global organization general assembly. Their proposals have an authoritative impact though they are not wrongfully binding.⁵ UNEP was expressly created to hide a range of environmental problems, starting from management of pollution and protection of the ozonosphere to biological diversity. aside from providing data concerning environmental quality, it conjointly finances the protection of tropical forests, life preservation and alternative comes. together with the planet life Fund and therefore the International Union for the Conservation of Nature and Natural resources (IUCN),([International Union for Conservation ...](#)) UNEP launched the planet conservation strategy in 1980, that geared toward protective genetic diversity and guaranteeing the property utilization of species and system.⁶ UNEP was given a broad coordination role to manage the work dole out by alternative agencies within the areas of gas depletion.⁷

Role of judiciary in environmental policies-

Judicial position in India:

The Supreme Court of India in **A.K. Gopalan V. State of Madras**⁸ and **Khark Singh V. State of U.P.**⁹ held that under Article 21, the right of life does not mean mere animal existence.

⁵ Trolldalen, J.M., International Environmental Conflict Resolution; The Role Of The United Nations, The United Nations Institute for Training and Research, Geneva, 1992, P. 35.

⁶ Mathur, A.S., & Chopman, K., Environmental Resources, Longman Scientific & Technical, 1995, P. 247.

⁷ Young, O., (Ed), Global Governance: Drawing insights from Environmental Experience, MIT Press, Cambridge 1997, P. 98.

⁸ AIR 1950, SC 27.

Further in the **Maneka Gandhi's Case**¹⁰ laid down that a law affecting life and liberty of a person has to stand the scrutiny of Article 14 and 19 of the Constitution. That is, if a law is enacted by legislature which touches upon the life and liberty of a person and curtails it, then it is mandatory requirement that procedure established by it for curtailing the liberty of a person must be reasonable, fair and just.¹¹

The over Court's elucidations in growing the which means of appropriate to life have brought new measurements in the natural statute as well as in the talk on human rights in India. The credit for the formation of a large group of ecological rights and authorizing them as central rights goes to the Permanent Court of India. This is a critical commitment for natural statute in India, on the off chance that one gains from encounters somewhere else.

The legitimate framework may ensure a Constitutional appropriate to condition and statutes may accord the privilege to partake in natural assurance for natives. Nonetheless, when no strategies for their support are made accessible, at that point they are on a par with nonexistent. This is the involvement in Spain, Portugal, Brazil and Ecuador. Importantly, Indian experience differentiates essentially frame these nations.

There is no immediate verbalization of the privilege to condition any place in the Constitution or, for that issue, in any of the laws concerning ecological administration in India. Be that as it may, this has been seized from beneath, by natural gatherings, propelling the Court to discover and build ecological rights from the accessible lawful material.

What the Court has accomplished since 1980, is to see the essential appropriate to life to incorporate diverse strands of natural rights that are at when individual and group in character. In any case, the development of major ideal by the Court perceiving ideal to condition as a section of ideal to life has not been statutorily settled nor has it been perceived in national ecological arrangement programs.

It is this interpretation of Article 21 that court has extended additional therefore on embrace the correct to wholesome setting. In alternative words if pollution causes permanent disabilities resulting in run-down or non-functioning of significant organs of the body of someone then such incapacity could cut back him to mere animal existence and thereby deny him right to life.

⁹ AIR 1963, SC 1295.

¹⁰ AIR 1978, SC 597,

¹¹ Francis Coralie Muliin V. The Administrator of Delhi, AIR 1981, SC 746.

Later on the question, 'whether right to a clean environment is part of the right of life' was examined by the Supreme Court in the case **Subhash Kumar V. State of Bihar**.¹² Where it declared that the right to a wholesome environment formed an integral part of the right to life guaranteed by article 21 of the Indian Constitution.

Also the Court stated: "The right to life could be a basic right which is guaranteed under article 21 of the Indian constitution and it includes the correct of enjoyment of pollution-free water and air for full enjoyment of life. If something endangers or impairs that quality of life in derogation of laws, a subject has the correct to own recourse to article 32 of the constitution for removing the pollution of water or air which can be prejudicial to the standard of life."

One more reference to the famous **Dehradun Quarry's case**,¹³ where the Supreme Court entertained complaints from Rural Litigation and Entitlement Kendra, Dehradun (a NGO) alleging that the operation of limestone quarries in the Mussoorie Dehradun region has resulted in degradation of the environment affecting the fragile ecosystem in the area. For which the Supreme Court using the Article 32 ordered for the closure of some of these quarries on the ground that these were upsetting the ecological balance. Though the judgment did not make a reference to Article 21 but, it is clear that by involving of jurisdiction by the Court under Article 32 presupposed the violation of right to life guaranteed under Article 21.

This role of the judiciary can be highlighted from the observation made by Justice Singh in **Ganga Pollution Tanneries case** as justifying its closure. The Court noted in conclusion: "we are conscious that closure of tanneries may bring unemployment, loss of revenue, but life, health and ecology have greater importance to the people."

There are also some High Courts have accorded recognition to this environmental dimension of Article 21 such as, judgment by the Andhra Pradesh High Court in case **T. Damodar Rao V. Special Officer Municipal Corporation Hyderabad**¹⁴, explicitly recognised an environmental dimension to Article 21 while considering a writ petition to enjoin the Life Insurance Corporation and Income Tax Department from building residential houses in a recreation zone. The court held: "It would be affordable to carry that the enjoyment of life and its

¹² Subhash Kumar V. State of Bihar, AIR, 1991, SC 420.

¹³ Rural Litigation and Entitlement Kendra, Dehradun V. State Uttar Pradesh, AIR, 1985, SC 652, AIR 1988 SC 2187.

¹⁴ AIR, 1987 AP 171.

attainment and fulfillment secured by Article 21 of the Constitution embraces the protection and preservation of nature's gifts while not that life can't be enjoyed."

In the Karnataka High Court judgment of the case **Lakshmi pathy V. State of Karnataka**¹⁵ made the following observations: The movement for restoration and maintenance of a livable setting needs curb of power of narrowly destined body agencies in appropriation of the dwindling surface area of land and water not already irrevocably appropriate, environment Protection isn't a preoccupation of the educated and affluent. The disposal and therefore the management of waste material and governmental regulation of polluting industries is public interest destined.

The right to life inherent in Article 21 of the Constitution doesn't disappoint of necessities of qualitative life that is feasible solely in associate degree setting of quality. Where, on account of human agencies, the standard of air and therefore the quality of setting area unit vulnerable or affected, the Court wouldn't hesitate to use its innovative power among its jurisdiction to enforce and safeguard the correct to life to push public interest.

Although the on top of rulings acknowledge that right to wholesome setting is implicit the Constitutional guarantee of Article 21, but, we have a tendency to should acknowledge that right to life isn't absolute too.

If the State guarantees to its voters the safety of life, the voters should owe a obligation to State to take care of its holiness. Man has to not merely live, however to measure well and living well suggests that a living ethical, virtuous and healthy and happy life. My right of living involves my duty to my fellow-men to permit them identical condition of life. Happiness and prosperity in an exceedingly society is an onto perform. I will relish my rights as long as I respect the rights of others.

Suggestions:

1. Have to sort the Garbage into two categories Biodegradable and Non-biodegradable
2. Have to say NO to use of Plastic
3. Have to Reuse and Recycle if possible before disposing
4. Have to Maintain the Hygiene yourself and surrounding

¹⁵ AIR, 1992 Karnataka 57.

5. Have to provide Environmental education
6. Have to encourage the Tree plantation
7. Have to focus on use of Water and hale with care
8. Have to only Consume what we need not more than that
9. Have to Reduce your carbon footprints
10. Have to check the Air Pollution

Conclusion

“If you want to clean up the environment, start with your mind. It starts there.”

Following a long course of active interpretation of constitutional and legislative clauses by the judiciary and vigorous efforts of some green citizens, the Indian environmental scenario has undergone a positive change. Today, the environmental consciousness imported by the courts, mingled with subsequent legislative efforts in the later years, introduced the right to environment as a fundamental right under Article 21 of the constitution of India.

The Courts in India have played a distinguishing role in gradually enlarging the scope of a qualitative living by engaging themselves into, and resolving various issues of environmental protection. Consequently, activities posing a major threat to the environment were curtailed so as to protect the individual's inherent right to wholesome environment as guaranteed under various instruments for protection of legal and human rights.

The attainment of the common purpose therefore depends upon the proper performance by every individual of his function and duties. Every citizen has social obligations to himself, to his family, to his neighbours, and to the society of which he is a unit.

The right to life is, therefore, the most fundamental of all rights, as it is the very core of humanity. It means a claim to so live that the existence does not jeopardise the existence of others. It is not only responsibility of individual alone but State is bigger partner in preserving environment and in realisation of right to life with human dignity. It is essential to create a shared international vision of long term goals and to build the international frameworks that will help each country to play its part in meeting these common goals. There should be compatibility between environment and economic development. Living standards beyond basic minimum are sustainable only if consumption standards everywhere have regard for long term sustainability.

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