

EVOLUTION OF RIGHT TO DECENT ENVIRONMENT AS A FUNDAMENTAL RIGHT IN INDIA

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Abstract: The contamination of earth's environment with materials that interfere with human health, the quality of life, or the natural functioning of ecosystems is called pollution. There are five major types of pollutions - water pollution, air pollution, soil pollution, sound pollution and solid waste pollution. The growth of industrialization and scientific development are the main causes of environmental pollutions. The environmental pollution may have disastrous effects on the public health, wild life, plants and trees. The preservation of human life is of paramount importance. The article 21¹ of the Constitution of India casts an obligation on the state to preserve human life. The expansive interpretation of the article 21 read with articles 48A², 47³ and 51A (g)⁴ of the Constitution of India by the Supreme Court in a recent past has led to the valuable development of an environmental jurisprudence.

Keyword: Decent Environment, Fundamental, Sustainable Development, technology.

INTRODUCTION

The Supreme Court of India in the period succeeding to the judgment in Maneka Gandhi's case⁵ has allowed article 21 to stretch its arms to include in it the right to education,⁶ right to go abroad,⁷ right against sexual harassment,⁸ right to livelihood,⁹ right to privacy,¹⁰ and right to dignity.¹¹ The Supreme Court has also revolutionized article 21 to include in it right to health,¹² right to shelter,¹³ and right to decent and unpolluted environment. The right to decent and unpolluted environment enables to improve and preserve the public health. The purpose of this study is to critically analyse the law laid down by the Supreme Court on right to decent and unpolluted environment.

EVOLUTION OF RIGHT TO DECENT ENVIRONMENT AND THE CONCEPT OF 'SUSTAINABLE DEVELOPMENT':

In *M. C. Mehta v. Union of India*,¹⁴ the Supreme Court stressed the importance of development of science and technology and growth of industrialization. The Court viewed that science and technology are increasingly used in producing goods and services calculated to improve the quality of life. There is a certain element of hazard or risk inherent in the very use of science and technology and it is not possible to totally eliminate such hazard or risk altogether. On the other hand the Court also highlighted the significance of public health and lives. In *Subhash Kumar v. State of Bihar*¹⁵ the Supreme Court viewed that the right to live is a fundamental right under article 21 of the Constitution and it includes the right of enjoyment of pollution free environment. The right to pollution free environment is necessary for full enjoyment of life. If anything endangers or impairs the quality of life a citizen has a right to move the Supreme Court under article 32 of the Constitution for removing that environmental pollution. The rule laid down in this case was further supplemented by the decision of the Supreme Court in *M. C. Mehta v. Union of India*.¹⁶ In that case the Court viewed that the natural sources

of air, water and soil cannot be utilized if the utilization results in irreversible damage to environment. The Court prohibited such use of the natural sources of air, water and soil to maintain and preserve the natural functioning of ecosystems.

The development of science and technology and growth of industrialization improve the quality of life of human beings. It makes the man's life easy, comfortable and full of pleasure. It cannot be denied that there is accelerated degradation of environment primarily on account of lack of effective enforcement of constitutional and statutory norms. If the industry runs in compliance of those norms it will result in enhancement of the quality of human life. The Courts in India may issue appropriate directions for effective enforcement of those constitutional and statutory norms. In one public interest litigation the directions that buses operating in Delhi shall not be allowed to ply unless converted into CNG fuel mode were issued by the Supreme Court. The Court fixed the dead line for the compliance. The Court refused the extension of the said dead line.¹⁷ The directions issued by the Court were for reducing the air pollution in Delhi and for safeguarding the health of the residents. The right to health is provided and protected by article 21 of the Constitution.

The case of Indian Council for *Enviro-Legal Action v. Union of India*¹⁸ was a social action litigation on behalf of the residents of Bichhri village in Udaipur district of Rajasthan. The residents of the village were the victims of environmental pollution caused by private chemical industrial plants. It was the case of invasion of right to life by the private chemical industrial plants. The Court viewed that the petition was not for issuance of appropriate writ, order or directions against the respondents which were running polluting industries. The petition was directed against Union of India, Government of Rajasthan and Rajasthan Pollution Control Board to compel them to perform their statutory duties. The failure on their part to carry out their statutory duties seriously undermined the right of life of the citizens

guaranteed by article 21 of the Constitution. It was viewed that if the inaction of the authorities jeopardized the right to life of the citizens the Court can intervene and make appropriate directions.

The petition under article 32 of the Constitution of India in public interest in *Vellore Citizens Welfare Forum v. Union of India*¹⁹ was directed against the water pollution which was caused by enormous discharge of untreated effluent by the tanneries and other industries in the State of Tamil Nadu. The tanneries were discharging untreated effluent into agricultural fields, road-sides, water-ways and open lands. The untreated effluent was also discharged in river Palar which is the main source of water supply to the residents of the area. The Court held that the traditional concept that development and ecology are opposed to each other, is no longer acceptable. The strict compliance of the principle of 'sustainable development' could maintain the balance between environmental protection and developmental activities. The Court followed the 'polluter pays' principle, and held that once the activity carried on was hazardous or inherently dangerous, the person carrying on that activity was liable to make good the loss caused to any other person by that activity. The Court also upheld the 'precautionary principle' which means unless an activity is proved to be environmentally benign in real and practical terms, it is to be presumed to be environmentally harmful. It was observed that the 'precautionary principle' and the 'polluter pays principle' are the essential features of 'sustainable development' and were accepted as part of the law of the land. The purpose of that law of the land is to protect the right of citizen to fresh air, clean water and pollution free environment. The Court viewed that with a view to improve the quality of human life sustainable development should be maintained by the industry and the State should ensure environmental protection.

In *Narmada Bachao Andolan v. Union of India*²⁰ the Supreme Court, in a petition challenging the construction of a dam on river Narmada (Sardar Sarovar Project), issued the directions in view of two principles (a) the completion of project at the earliest and (b) ensuring compliance with conditions on which clearance of the project was given. The conditions include the completion of relief and rehabilitation work and taking of ameliorative and compensatory measures for environmental protection. These measures for environmental protection were considered necessary in protecting the rights under article 21 of the Constitution.

The question of controlling the noise pollution was considered and discussed in detail by the Supreme Court in *Church of God (Full Gospel) in India v. K. K. R. M. C. Welfare Association*.²¹ The respondent complained of the noise pollution produced by loudspeakers, drums and other instruments used while praying in the Church. The Court viewed that the noise pollution causes interruption in natural right to sleep, affect communication, loss of efficiency, hearing loss or deafness, high blood pressure, depression, irritability, fatigue, gastro-intestinal problems, allergy, distraction, mental stress and annoyance. It also affects a right to study of a student preparing for his examination. The Court as to co-existence of right against noise pollution and freedom of religion viewed that the freedom to practice,

profess and propagate religion is subject to public order, morality and health. The freedom of religion is not absolute and no religion prescribes that prayers should be performed through voice-amplifiers or beating of drums. The Court also considered the Noise Pollution (Regulation and Control) Rules, 2000 made under the Environment (Protection) Act, 1986 which prescribe for permissible limits of noise in residential, commercial, industrial areas or silence zone at day time (from 6.00 am to 10.00 pm) and at night time (from 10.00 pm to 6.00 am). The Court found that there is lack of awareness among the citizens as well as the Implementation Authorities about the Rules or its duty to implement the same. Hence the Court, after considering the various contentions, directed that the said Rules, 2000 are required to be enforced.

CONCLUSIONS:

The expansive interpretation of the article 21 of the Constitution of India by the Supreme Court has led to the salutary development of an environmental jurisprudence. In this matter the provisions of article 48-A, article 47 and article 51A (g) has played the supportive role. The Supreme Court of India in the recent past by evolving principles of 'polluter pays', 'precautionary principle', and 'sustainable development' has rendered extraordinary service in balancing the conflict between the need of growth of industrialization and scientific development on the one hand and protection of public health and lives on the other.

¹Article 21 of the Constitution of India declared that no person shall be deprived of his life or his personal liberty except according to the procedure established by law.

²This article was inserted by the Constitution (Forty-second Amendment) Act, 1976 in Part IV which stipulates that the State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country.

³It provides that it shall be the duty of the State to raise the level of nutrition and the standard of living and to improve public health.

⁴The article 51A (g) provides that it shall be the duty of every citizen of India to protect and improve the natural environment including forest, lakes, rivers and wildlife and to have compassion for living creatures.

⁵*Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

⁶*Mohini Jain v. State of Karnataka*, AIR 1992 SC 1858; and *Unni Krishnan, J.P. v. State of Andhra Pradesh*, AIR 1993 SC 2178; *Election Commission of India v. St. Mary's School*, AIR 2008 SC 655.

⁷*Satwant Singh Sawhney v. D. Ramaratnam*, AIR 1967 SC 1836.

⁸*Vishaka v. State of Rajasthan*, AIR 1997 SC 3011; and *Apparel Export Promotion Council v. A.K. Chopra*, AIR 1999 SC 625.

⁹*Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180; *Sodan Singh v. New Delhi Municipal Committee*, AIR 1989 SC 1988; and *Saudan Singh v. N.D.M.C.*, AIR 1992

SC 1153.

¹⁰ *Kharak Singh v. State of U. P.*, AIR 1963 SC 1295; *Govind v. State of Madhya Pradesh*, AIR 1975 SC 1378; *R. Rajagopal v. State of Tamil Nadu*, AIR 1997 SC 568; and *Hinsa Virodhak Sangh v. Mirzapur Moti Kuresh Jamat*, AIR 2008 SC 1892.

¹¹ *Francis Coralie Mullin v. Administrator, U. T. of Delhi*, AIR 1981 SC 746; and *Vikram Deo Singh Tomar v. State of Bihar*, AIR 1988 SC 1782.

¹² *Parmanand Katara v. Union of India*, AIR 1989 SC 2039; *State of Punjab v. Mohinder Singh Chawla*, AIR 1997 SC 1225; *Murli S. Deora v. Union of India*, AIR 2002 SC 40; and *Confederation of Ex-Servicemen Association v. Union of India*, AIR 2006 SC 2945.

¹³ *Shantistar Builders v. N.K. Totame*, AIR 1990 SC 630; and *Chameli Singh v. State of Uttar Pradesh*, AIR 1996 SC 1051.

¹⁴ AIR 1987 SC 965. The litigation relates to harm caused due to leakage of oleum gas from caustic chlorine plant of Shriram Foods and Fertilizer Industries. See also *M.C. Mehta v. Union of India*, AIR 1987 SC 1086, where the Court considered the question concerning the norms for determining the liability of such enterprises as to damages and the basis to compute such damages.

¹⁵ AIR 1991 SC 420. See also *M. C. Mehta v. Union of India*, AIR 2004 SC 4016, where the Court viewed that the natural sources of air, water and soil cannot be utilized if the utilization results in irreversible damage to environments. The Court also reiterated that the 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.

¹⁶ AIR 2004 SC 4016.

¹⁷ *M. C. Mehta v. Union of India*, AIR 2001 SC 1948.

¹⁸ AIR 1996 SC 1446. See also *B. L. Wadehra, Dr. v. Union of India*, AIR 1996 SC 2969.

¹⁹ AIR 1996 SC 2715. For more cases on environmental protection see also (a) *M. C. Mehta v. Union of India*, AIR 1997 SC 734, where the Court issued directions to the respondent to prevent degradation to Taj Mahal by 292 industries located in nearby area. (b) *M. C. Mehta v. Union of India*, AIR 1999 SC 3192, for further directions of the Supreme Court as to prevention of environmental pollution in and around the Taj Mahal. (c) *Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspaper*, AIR 1989 SC 190, where the Court viewed that there is a strong link between article 21 and the right to know particularly where secret Government decisions may affect health, life and livelihood. (d) *Essar Oil Ltd. v. Halar Utkarsh Samiti*, AIR 2004 SC 1834. (e) *A. P. Pollution Control Board v. M. V. Nayudu*, AIR 1999 SC 812.

²⁰ AIR 2000 SC 3751. (3 JJ.) See also *N. D. Jayal v. Union of India*, AIR 2004 SC 867, where it was observed that the concept of 'sustainable development' is to be treated an integral part of life under article 21 of the Constitution of India.

²¹ AIR 2000 SC 2773. See also *A. P. Bankers and Pawn Brokers Association v. Municipal Corporation of Hyderabad*, AIR 2001 SC 1356.