

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 2 | Issue 1

2020

© 2020 *International Journal of Legal Science and Innovation*

Follow this and additional works at: <https://www.ijlsi.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Legal Science and Innovation at VidhiAagaz. It has been accepted for inclusion in International Journal of Legal Science and Innovation after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Legal Science and Innovation**, kindly email your Manuscript at editor.ijlsi@gmail.com.

Right to Clean Air: Its Constitution Validity and Its Administration

BHAKTI VAKIL¹

ABSTRACT

“Our goal is not just an environment of clean air and water and scenic beauty. The objective is an environment of decency, quality and mutual respect for all other human beings and all other living creatures.” - GAYLORD NELSON

The quality of life depends on the quantity of environment. Besides being a human right, right to live in clean and healthy environment is also a basic fundamental right of human being. Our country India is the largest democratic nations in the world and the first country to insert an amendment into its constitution allowing the state to protect and improve the environment for safeguarding the public health, forests, and wildlife. The paper tends to conceptualize the right in reference to constitution of India and therein case laws. The Stockholm Conference held in the year 1972 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 wellbeing.” After great deal of deliberation, judicial activism and intervention, the right to clean air has been identified as element of right to life under Article 21 of the Indian Constitution. The various international principles are referred by the Courts of India to protect the environment. But irrespective of all the efforts made, many people do not have access to clean air and pure drinking water due to degradation of environment. The study depicts various facet of key changes made by the judiciary in making it a fundamental right. Especially, Public Interest Litigation which plays a vital role in developing environmental laws

Keywords: *Environment, clean, healthy, fundamental right, judiciary and legislative.*

I. INTRODUCTION

The term ‘environment’ can be defined as the surroundings like natural resources, atmosphere, water bodies etc. in which an individual or an organism lives. The term cannot be defined precisely as it is linked to ecology, biology, geography, psychology etc. But the Environment (Protection) Act, 1986 defines it in Section 2(a) as “Environment includes water, air and land and interrelationship which exists among and between water, air and land

¹ Author is a student at Prestige Institute of Management and research, Department of law, Indore, India.

and human being, other living creatures, plants, microorganism and property.” Precisely talking about Air pollution, it means “the presence in the atmosphere of any air pollutant². A pollutant is solid, liquid or gaseous substance present in the atmosphere in such concentration as may be or tend to be injurious to human being or other living creatures or plants or property or environment.”³

Earlier in India, it was recognized only as duty not a right which was indirectly dealing with the subject of environmental pollution. Like Article 39, 42, 47, 48 and 49 of Constitution of India. With the advancement of technology and science, the industries, transport and other activities came up which make an enhancement in polluted environment. The first step to protect the environment was initiated in Stockholm Conference in the year 1972. The conference takes into account the fact that the environment may challenge the very existence of mankind as it has an immense impact on life of human kind and sustainable modification or harm. This result in 42nd Constitutional Amendment Act, 1976⁴ which inserted Article 48A and Article 51 A(g) wherein it is announced that national commitment to protect and improve environment and preserve air quality. Judiciary, in return interpreted the legislation in further case laws which eventually made it a fundamental right. Nowadays, the problem of the surrounding are no longer being viewed from the angle of pollution touching the industrialized countries however seen rather as a worldwide hazard threatening the world and therefore community as a whole is responsible towards maintaining healthy environment.

(A) Aim of the Study

The study focuses on law of land, guaranteeing the right to clean air as a fundamental right and claiming for healthy environment.

(B) Objectives

- To analysis on Indian Constitution and other legislative framework on clean environment
- To explicate the role of judiciary on clean environment
- To find out measures adopted by the Indian Government on clean environment

(C) Research Question

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

² The Air (Prevention and control of pollution) Act, 1981, No. 14, Acts of Parliament, 1981 (India), S2 (b).

³ The Air (Prevention and control of pollution) Act, 1981, No. 14, Acts of Parliament, 1981 (India), S2 (a).

⁴ The Constitution (Forty- Second Amendment) Act, 1976, No. 91, Acts of Parliament, 1976 (India).

(D) Hypothesis

In order to breathe clean air, people must be protected by clear and binding legal standards.

(E) Research Methodology

The researcher has followed a Doctrinal research method, and acquired qualitative data. Both primary and secondary data are used for the study. Primary data includes of bare acts, case laws, etc. and secondary data have collected from published sources, such as journals, periodicals, research documents, articles, newspaper etc.

II. CONSTITUTION AND CLEAN ENVIRONMENT

The Constitution of India casts an obligation on the state as well as the citizens to protect and improve the environment. Justice Krishna Iyer calls it ‘a remedial weapon of versatile use’ which must be made available to citizens in their struggle to achieve social justice (Krishna Iyer 2011). After the Stockholm Declaration, with the increase in the overall environmental consciousness, major amendments were made to the Constitution of India. The said amendment added Article 48A to the Directive Principles of State Policy. It declares: ‘the State shall endeavor to protect and improve environment and to safeguard the forest and wildlife of the country’. A similar responsibility imposed on every citizen in the form of fundamental duty “to protect and improve the natural environment including forest, lakes, rivers and wildlife, and to have compassion for living creatures”.⁵ Although unenforceable by courts, the Directive Principles are increasingly being cited by judges as complementary to fundamental rights. In several environmental cases, the court interpreted them as imposing ‘an obligation’ on the government, including courts, to protect the environment.

In the case of *Shri Sachidanand Pandey V. State of West Bengal*⁶ 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. In certain cases the Court can take affirmative action commanding the other organs of the State namely, the executive and the legislature to comply with the statutory obligation of protecting and improving the environment. In *T. Damodar Rao V. SO Municipal Corporation, Hyderabad*⁷, the Court pointed out that in view of Articles 48-A and 51A (g), the protection of the environment is not only the duty of every citizen but it is also the ‘obligation’ of the State and all other State organs including the Courts.

⁵ INDIA CONST. art. 51A cl. (g).

⁶ *Shri Sachidanand Pandey v State of West Bengal* AIR 1987 S.C. 1109.

⁷ *T. Damodar Rao V. SO Municipal Corporation, Hyderabad* AIR 1987 AP 171.

In the realm of basic rights the foremost essential rights is that right of life secured by Article 21 under Indian Constitution, that the article says that can't be removed settle for consistent procedure established by law. The major contribution of the Supreme Court to human rights jurisprudence has been two fold. Firstly, it is the substantive expansion of the concept of human rights under Article 21 of the Constitution and secondly, the procedural innovation of PIL. It goes to the credit of the Supreme Court of India that by its landmark judgment in Rural Litigation and Entitlement Kendra vs State of UP⁸, M C Mehta vs. Union of India⁹ and several other pronouncements it has expanded the interpretation of right to life in Article 21, guaranteeing the right to life, an expanded meaning to include the right to safe and pollution free environment within it's ambit. In the case of Subhash Kumar v State of Bihar¹⁰ the Apex Court gave directions that the 'right to life' referred to in Article 21 of the Constitution of India includes the 'right to pollution free air and water'.

The most significant development in matters relating to environment has been the expanded interpretation given by the Supreme Court of India for including a 'right to a clean and healthy environment' within the ambit of 'right to life'. Therefore, even though the right to a safe and clean environment does not form an explicit part of the Fundamental Rights enshrined in Part III of the Constitution it has the force of a Fundamental Right in view of the status accorded to it by the highest Constitutional interpretative authority of laws in the country.

While the right to environment has been recognized within the national legal system as per the decision of the Supreme Court, and can be enforced under the powers of the Constitution, it places the responsibility on the government to adopt appropriate policies towards fulfilment of the claims arising from the established right. The government has to protect, promote and fulfil the right by enacting appropriate legislation and taking other supportive measures so as to make the public aware of their rights

III. ENVIRONMENT POLICIES BY GOVERNMENT

According to IQAir¹¹ India is the 5th most polluted countries in 2019 with Ghaziabad ranked as the most polluted cities in the world. Though it is improved from 2018, but still needs great concern. Besides making laws, the Government has been following certain policies and programmes which has shown positive impact on environment. Some of them are:

⁸ Rural Litigation and Entitlement Kendra V. State of UP AIR 1986 2 S.C.C. 431.

⁹ M C Mehta vs. Union of India 1998(6) S.C.C. 60 and 1998(9) S.C.C. 589.

¹⁰ Subhash Kumar v State of Bihar (1991) S.C 420 PIL.

¹¹ *World's most polluted countries 2019 (PM2.5)*, IQAIR (Mar. 2019), <https://www.iqair.com/us/world-most-polluted-countries>

- Green skill development Programme

It was launched in June 2017 by the Ministry of Environment, Forest, and Climate Change. 'Green skills' refers to those that contribute to preserve and restore environment and create a sustainable future. It focuses on developing skills among youth in the environment and forest sector.

- Swachh Bharat Abhiyan

It is the most popular campaign relating to environment. It was launched on October 2nd 2014 from famous personalities to local people, everybody came forward on roads to make India clean. In fact, under rural areas the same efforts can be seen in children cleaning their surroundings. The 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.

- National clean air Programme

It was launched in 2019, aiming for pollution free India with green mother earth and blue skies. It proposes a "tentative national level target of 20%–30% reduction of PM2.5 and PM10 concentration by 2024".¹²

IV. PUBLIC INTEREST LITIGATION: A TOOL FOR IMPROVEMENT

Public Interest Litigation has played huge role in developing environmental laws in India. The majority of the environment cases in India since 1985 have been brought before the court as writ petitions, normally by individuals acting on pro bono¹³ basis. The PIL system was started with J. PN Bhagwati and J. Iyer through their landmark judgement which clear the path to proceed on the road of PIL. The overlooking by legislation compel NGOs and individuals to take initiative for their environment. It was M.C. Mehta¹⁴ which revived the concept of environmental jurisprudence through PIL. Some of the landmark judgements are: Andhra Pradesh Polluting Industries Case¹⁵: Nakka Vagu was a fresh water stream which provided fresh water for drinking and irrigation to the villagers living in 14 villages adjacent to it. But the indiscriminately set up 250 industries which did not fulfill the condition of setting up water treatment plants turned the stream into a huge drain carrying industrial

¹² Opinion, *The suffocation that India needs to avert*, LIVEMINT (Mar. 06, 2019, 10:43PM), <https://www.livemint.com/opinion/online-views/opinion-the-suffocation-that-india-needs-to-avert-1551891920860.html>

¹³ SATISH C. SHASTRI, ENVIRONMENTAL LAW IN INDIA (2nd ed., Eastern Book Company 2005).

¹⁴ M.C. Mehta v. Union of India &Ors., AIR 1997 S.C. 734.

¹⁵ A P Pollution Control Board V. Prof. M. V. Nayadu (Retd.) and ors. (1999) 3 S.C.C. 1.

effluents. The Supreme Court directed that an amount of 20 million should be paid to the farmers who had lost their crops and cattle due to air and water pollution. The authorities are directed monitor setting up of set up pollution control devices by the polluting industries.

Ganges Pollution Case¹⁶: The Supreme Court of India reacting to the public interest litigations has passed several judgments and a number of Orders against polluting industries numbering more than fifty thousand in the Ganga basin. As a result of these directions millions of people have been saved from the effects of air and water pollution in Ganga basin covering 8 states in India

Taj Trapezium Case¹⁷: In and around Agra, several industries were set up. The Mathura Reinery, iron foundries, glass and other chemical industries are first and foremost amongst them. The Supreme Court of India delivered a historic Judgment in December 1996. The apex Court gave various directions including banning the use of coal and coke and directing the industries to switch over to Compressed Natural Gas (CNG).

Environmental impact assessment and rehabilitation of displaced persons¹⁸: the Supreme Court held that sustainable development is to be treated as an integral part of life under article 21 of the Constitution of India. So complying with the principle of sustainable development is a constitutional mandate. The Indian Judiciary played a vital role in balancing the two seemingly opposite concepts; environment and development.

Import of hazardous waste¹⁹: the petitioner claims to ban all imports of all hazardous/toxic wastes. It declare that without adequate protection to the workers and public and without any provision of sound environment management of disposal of hazardous/toxic wastes, the Hazardous Wastes (Management & Handling) Rules, 1989 are violative of Fundamental Rights and, therefore, unconstitutional.

Dehradun Quarry's Case²⁰: The Supreme Court entertains complaints from Rural Litigation and Entitlement Kendra, Dehradun (NGO) alleging that the operation of limestone quarries in the Mussorie Dehradun region has resulted in degradation of the environment affecting the fragile ecosystem in the area. For the same, Supreme Court ordered for the closure of some of these quarries

¹⁶ M. C. Mehta V. Union of India AIR 1987 S.C. 1086.

¹⁷ M.C. Mehta V. Union of India AIR 1987 S.C. 1086.

¹⁸ N. D Jayal V Union of India AIR 2004 S.C. 1 (Supp) 867.

¹⁹ Research Foundation for Science, Technology and Natural Resource Policy v. Union of India & Ors., (2000) 9 S.C.C. 41.

²⁰ Rural Litigation and entitlement Kendra Dehradun and ors. V. State of U.P. and ors. 1985 AIR 652.

Prohibition of smoking²¹ : While prohibiting smoking in public places, the Supreme Court stated that ‘fundamental right under Article 21’ of the Constitution of India provides that no one shall be deprived of his life without due process of law. In any case, there is no reason to compel non-smokers to be the helpless victims of air pollution.

V. GUIDING PRINCIPLES EVOLVED FROM JUDICIARY TO PROTECT ENVIRONMENT

In the mid-nineties, Supreme Court referred a number of internationally accepted principles in issues pertaining to the environment in its decisions. Relying on Article 21 of Constitution of India, Supreme Court gave expansive meaning to ‘environment’ taking within its fold the quality of life as distinguished from a mere animal existence.²²

Polluter pays principle

The ‘polluter pays principle’ was for the first time, applied and defined in the case of Indian Council for Enviro-legal Action V. Union of India²³. It was declared by the court that redemption of the damaged environment is a part of process of sustainable development and such polluter is liable to pay the cost of the individual sufferers as well as the cost of reversing the damaged ecology. The Principle means the absolute liability for harm to environment extend not only to victims of pollution but also to the cost of restoring the environmental degradation.

Precautionary Principle

It had its origin in the mid-1980s from the German vorsorgeprinzip. The Supreme Court of India, in the case of Vellore Citizens’ Welfare Forum V. Union of India²⁴ referred to precautionary principle and declared it as part of environmental jurisprudence of India. It means environmental measures by the State Government and the statutory authorities must anticipate, prevent attack the cause of environmental degradation

Principle of New Burden of Proof

In AP Pollution Control Board case²⁵, it was explained the precautionary principle has led to this principle. In environmental case where proof of absence of injurious effect of action is in question, the burden lies on those who want to change the status quo. This is often termed as reversal of burden of proof. Therefore it is necessary that the party attempting to preserve the status quo by maintaining a less polluted state should not carry the burden and the party who

²¹ Murli Deora V. Union of India (2002) AIR 40.

²² Chhetriya Pardushan Mukti Sangharsh Samiti V. State of UP (1990) 4 S.C.C. 449.

²³ Enviro-legal Action V. Union of India (1996) 2 JT (SC) 196.

²⁴ Vellore Citizens’ Welfare Forum V. Union of India 1996 (5) S.C.C. 647.

²⁵ A P Pollution Control Board V. Prof. M. V. Nayadu (Retd.) and ors. (1999) 3 S.C.C. 1.

wants to alter it, must bear this burden.

Sustainable Development

The concept of sustainable development came in 1972 in the Stockholm Declaration. But was given definite shape in a report by World Commission on environment known as “Brudtland Report”. The notion of sustainable development was expressed and given effect to by the Supreme Court in Vellore Citizen Welfare Forum V. Union of India and ors.²⁶ The court held that “remediation of the damaged environment is a part of sustainable development and as polluter is liable to pay the cost to the individual sufferer as well as the cost of reversing the damaged ecology”. Sustainable development (SD) is a pattern of economic growth in which resource use aims to meet human needs while preserving the environment so that these needs can be met not only in the present, but also for generations to come.²⁷

VI. ENVIRONMENTAL LACUNAS NEED TO ADDRESS

Irrespective of individuals coming forward to make the environment clean and healthy, there are some issues which needs to be considered by the Government of India itself. The following issues need to be stressed to create healthy environment.

Climate Change

As per 2019’s Global Assessment Report of the United Nations Office for Disaster Risk Reduction, countries like India are likely to face economic losses to the tune of 4 percent of their GDP annually if they don’t invest in building natural ecosystem. Hence, the Government has to take leadership position in global climate platforms. They need to ensure there is a network of knowledge and linkages to build resilience and deal with climate change.

Air Pollution

WHO list of the ten most polluted cities in the world includes seven in India in 2019. Millions people dies in a year from air pollution, the government need to ensure that power plant operation and ideal fuel norms are in place. The National Clean Air Plan, 2018 needs guidelines for proper implementation. As Union Minister Nirmala Sitharaman allocated Rs 460 crores for pollution control schemes in 2019. But revised budget for such schemes in the last fiscal was Rs five Crores.²⁸

²⁶ Id at 25.

²⁷ *Role of Supreme Court in Sustainable Development of Environment and its protection in India (To Study of Uttarakhand State)* 7 I. J. FOR ENVIRONMENTAL REHABILITATION AND CONSERVATION 92, 95-96 (2017).

²⁸ *Budget 2019: Pollution control in focus Environment Ministry gets Rs 2954 crore.* THE ECONOMIC TIMES Jul 5, 2019.

Clean energy transfer

India needs to make a transition to clean energy. It has set a target installing 100GW of solar capacity by 2022. While renewables sector has been growing, land acquisition challenges and volatility have led to low investor appetite. The government should create flexible demand and markets to ensure the country's shift from coal to renewable energy is smooth.

Hazard Management

As one of the most polluted countries, it is obvious that we create large measures of waste – electronic, plastic, biomedical etc. be that as it may, what is astounding is the way we are attempting to deal with this waste. Swachh Bharat Abhiyan being the most impactful Programme still considered to be inadequate to change the environment. Forbidding the usage of single use plastic was a positive development however, we can see a few such bundling items making a rebound. There needs to be consistent change, and the vital foundation should be made for proficient and successful waste administration.

VII. SUGGESTION

- Rapid improvement in the quality and availability of public transport. Delhi, being the most polluted country need to improve quality and upkeep of buses.
- Mapping of streets to identify loose dust spots and the creation of an environment where most of our roadside areas either have a green cover or are turned concrete.
- Use bacterial and enzyme based intervention, waste to energy plants and other initiatives to get rid of mountains of garbage
- Create a wall of large green trees like Peepul and other pollution absorbing plants along with Western and eastern peripheral expressways to contain to flow of dust and smoke coming in from outside.
- Urban cleaning to happen through vacuuming, so that road dust is not left on the roads.
- Government need to urgently prioritize air pollution action, and providing open data is first step. To make people aware about consequences of air pollution is must.

VIII. 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. The attainment of the common purpose therefore depends upon the proper performance by every individual of his function and duties. 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 jeopardize the existence of others. It is not only responsibility of individual alone but State is bigger partner in preserving environment and in realization of right to life with human dignity. From Sawachh Bharat Abhiyan to making toilets, government has taken strong initiatives to preserve the ecological balance. It's more of humanity than a duty to protect the environment and preserve it for future generations.
