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RESIDENTIAL PROXIMITY TO UNREGULATED INDUSTRIES; AN INFRINGEMENT ON FUNDAMENTAL RIGHT TO HEALTH AND CLEAN ENVIRONMENT

AUTHORED BY - ROSEMOL SEBY & VIDHUSMRITHI

Residential proximity to industries is a serious socio-legal problem that has to be looked into as it is associated with serious health risks if such industrial activities are not properly managed and regulated. Living near industries can expose residents to pollutants, potentially leading to adverse health outcomes, including respiratory problems, cardiovascular issues, and increased cancer risk, depending on the type and emissions of the industry. Among various industries, air pollution is significantly high in residential areas which are situated near tyre manufacturing companies as it has high carbon emissions. If the disposal of the carbon waste is not done properly, it will cause serious health hazards to the people nearby.

Carbon emissions in tyre manufacturing industries come from various stages of the production process. Residential areas near tyre manufacturing units can be significantly affected by **carbon emissions** and other pollutants released during production. The impact isn't just about CO₂ (which contributes to climate change globally), but also **associated air pollutants** that can have **direct local health and environmental effects**.

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

Industrial emissions are one of the leading sources of air pollution globally. During manufacturing and processing activities, industries release a variety of pollutants into the atmosphere, including particulate matter (PM), sulfur dioxide (SO₂), nitrogen oxides, carbon monoxide (CO), and volatile organic compounds (VOCs). These pollutants are byproducts of burning fossil fuels, chemical processing, and raw material handling. Hence industries significantly degrade air quality, especially in densely populated or poorly regulated areas. Industrial air pollution contributes to smog formation, acid rain, respiratory illnesses, and climate change. Without adequate pollution control measures, the cumulative impact of industrial emissions poses a serious threat to environmental sustainability and public health. The generation of hazardous waste is a necessary side effect of modern industrial production. Factories must cope daily with large accumulations of unrecyclable chemical byproducts

generated by normal production techniques. Until recently, industrial hazardous waste was not legally distinguished from municipal garbage and other solid wastes. It was disposed of with ordinary garbage, at very low cost to the generator, mostly in coastal waters or in landfills unfit to adequately contain it. Modern methods of disposal such as incineration and development of sanitary landfills etc., are used to solve the problem. Dumping and burning waste is not an acceptable practice from an environment and health perspective.¹ This will make us understand the causes and effects of bad habits in terms of industrial waste disposal. It is also necessary to take some measures to reduce or control solid waste pollution which occurs as a result of industrial pollution.

The Constitution of India does not include any specific provision on environmental pollution generally or air pollution specifically. However, the judiciary has interpreted the fundamental right to life guaranteed under Article 21 of the Constitution to include the right to enjoyment of pollution-free air.² The Constitution being the fundamental law of the land has a binding force on citizens, non-citizens as well as the State. The Fundamental Rights and the Directive Principles of State Policy underline our national commitment to protect and improve the environment.³ Article 21 is the heart of the Fundamental Rights and has received expanded meaning from time to time after the decision of the Supreme Court in *Maneka Gandhi V. Union of India*.⁴ Article 21 guarantees a Fundamental Right to Life- a life of dignity to be lived in a proper environment, free of danger of disease and infection. The Right to Live in a healthy environment as part of Article 21 of the Constitution was first recognized in the case of *Rural Litigation and Entitlement Kendra V. State of U.P.*⁵

Life suggests that to measure with human dignity however if one cannot breath clean air, have safe potable or food, then 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'⁶ so as to alleviate

¹ Grineski SE. Incorporating health outcomes into environmental justice research: The case of children's asthma and air pollution in Phoenix, Arizona. *Environmental Hazards*. 2007;7:360-371.

² *Subhash Kumar v State of Bihar*, AIR 1990 SC 420.

³ Paranjape, S., & Kulkarni, S. (2018). Environmental Laws in India: A Historical Perspective. *Journal of Environmental Law and Policy*, 7(2), 145-168.

⁴ *Maneka Gandhi V. Union of India*, AIR 1978 SC 597

⁵ *Rural Litigation and Entitlement Kendra V. State of U.P.*, AIR 1988 SC 2187

⁶ *Hussainara Khatoon & Ors v. Home Secretary, State of Bihar*, 1979 AIR 1369.

the sufferings of the victims of environmental pollution below the banner of Public Interest Litigation (PIL). The courts have given expanded interpretation to Article 21 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.

Nowadays through judicial interpretations, the right to clean air has been identified as element of right to life under Article 21 of the Constitution.⁷ The Stockholm Conference held in the year 1972⁸ 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 a great deal of deliberation, judicial activism and intervention, the right to live in a pollution free environment has been recognised as a fundamental right under Article 21⁹ of the Indian Constitution. Thereafter a lot of legislations made by the legislature to provide clean environment to the citizens are working towards conserving the environment. Specifically, the role of NGOs also has special mention in protection and in proving the rich quality of clean and pollution-free environment, 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, and the inability of the government to control such widespread polluting activities. Thus, before we can comment on the future of clean air as a right, we need to thoroughly analyse the existing legislations and the impact they have made since they were implemented.

3.3. CLEAN ENVIRONMENT AND DIRECTIVE PRINCIPLES OF STATE POLICY

Our country India is one of the largest democratic nations in the world and also 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. Previously there were articles 39, 42, 47, 48 and 49¹⁰ indirectly dealing with the subject of environmental pollution and protection in the former constitutional law of India. Keeping at pace with the world, in the year 1976, 42nd constitutional amendment was adopted in response to the Stockholm

⁷ The Editorial Board, *Clean Air is a Fundamental Right, Integral to the Idea of Citizenship*, Telegraph India (May 22, 2025 12:23 PM)

⁸ Richard Black, *Stockholm: Birth of the Green Generation*, BBC (May 22, 2025 01:51 PM), <https://www.bbc.com/news/science-environment-18315205>.

⁹ INDIA CONST. art. 21.

¹⁰INDIA CONST. art. 39,42, 47, art. 48 and art. 49

International Conference on Human Environment in 1972¹¹, thus Article 48A and Article 51A (g) got inserted and came into effect on 3rd January, 1977. The language of the Directive Principles of State Policy requires not only a protectionist stance by the state but also compels the State to look for the improvement of the polluted environment. Policy statement for the abatement of pollution, 1992¹² declares the objective of the government to integrate environmental considerations in to decision makings at all levels.

The Directive Principles of State Policy Article 48-A and Fundamental Duties Article 51A (g)¹³ under the Constitution of India explicitly announced the national commitment to protect and improve environment and preserve air quality. According to Article 48A of the Directive Principles, it declares: “*the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country*”. A similar responsibility imposed upon 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*”. Hence Article 51A (g) of part IV-A of basic Duties also states that it shall be the duty of each national of Indian to safeguard and improve the natural surroundings. The amendments also introduced certain changes in the Seventh Schedule of the Constitution.¹⁴ ‘Forest’ and ‘Wildlife’ were transferred from the State list to the Concurrent List. This shows the concern of Indian parliamentarian to give priority to environment protection by bringing it out the national agenda. Although unenforceable by a court, the Directive Principles are increasingly being cited by judges as a complementary to the fundamental rights. In several environmental cases, the courts have guided by the language of Art. 48A¹⁵ and interpret it as imposing “an obligation” on the government, including courts, to protect the environment.

The Public Trust Doctrine, evolved in *M.C. Mehta v. Kamal Nath*¹⁶, states that certain common properties such as rivers, forests, seashores and the air were held by Government in Trusteeship for the free and unimpeded use of the general public. Granting lease to a motel located at the bank of the River Beas would interfere with the natural flow of the water and that the State Government had breached the public trust doctrine. The matter regarding the vehicular

¹¹ A. Brisman, Stockholm Conference, 1972, Encyclopaedia of Global Justice, Springer (2011).

¹² MoEF, *Policy Statement for the Abatement of Pollution*, Government of India, https://www.iitr.ac.in/wfw/web_ua_water_for_welfare/environment/Pollution_Policy_Statement_1992.pdf.

¹³ INDIA CONST. art. 48A 51-A,

¹⁴ INDIA CONST. sch. 7

¹⁵ Id at 31

¹⁶ *M.C. Mehta vs Kamal Nath & Ors*, (2000) INSC 334.

pollution in Delhi city, in the context of Art 47 and 48 of the Constitution came up for consideration in *M.C. Mehta v. Union of India*¹⁷ (Vehicular Pollution Case). It was held to be the duty of the Government to see that the air did not become contaminated due to vehicular pollution. The Apex court again confirming the right to healthy environment as a basic human right stated that the right to clean air also stemmed from Art 21 which referred to right to life. This case has served to be a major landmark because of which lead-free petrol supply was introduced in Delhi. There was a complete phasing out old commercial vehicles more than 5 years old as directed by the courts. Delhi owes its present climatic conditions to the attempt made to maintain clean air.

In *T.N. Godavarman Thirumalpad v. Union of India & Ors.*,¹⁸ a three-Judge Bench of this Court read Article 48A and Article 51A together as laying down the foundation for a jurisprudence of environmental protection and held that "Today, the State and the citizens are under a fundamental obligation to protect and improve the environment, including forests, lakes, rivers, wildlife and to have compassion for living creatures". In *State of W.B. & Ors. v. Sujit Kumar Rana*¹⁹, Articles 48 and 51-A(g) of the Constitution were read together and this Court expressed that these provisions have to be kept in mind while interpreting statutory provisions.

It is thus clear that faced with the question of testing the constitutional validity of any statutory provision or an executive act, or for testing the reasonableness of any restriction cast by law on the exercise of any fundamental right by way of regulation, control or prohibition, the Directive Principles of State Policy and Fundamental Duties as enshrined in Article 51-A of the Constitution play a significant role.

The legislative and constitutional framework in India for preventing air pollution is comprehensive, multidimensional, and evolving. Rooted in the **Fundamental Right to Life under Article 21 of the Constitution**, the judiciary has played a pivotal role in interpreting environmental rights as intrinsic to human dignity and survival. This right has been consistently upheld and expanded through landmark judgments, thereby strengthening the environmental jurisprudence of India. The **Directive Principles of State Policy (Article 48A)** and **Fundamental Duties (Article 51A(g))**, though not directly enforceable, these provisions have

¹⁷ *M.C. Mehta v. Union of India*, 1991 SCC (2) 353

¹⁸ *T.N. Godavarman Thirumalpad v. Union of India & Ors.*, (2002) 10 SCC 606

¹⁹ *State of W.B. & Ors. v. Sujit Kumar Rana*, (2004) 4 SCC 129

shaped the interpretation and application of environmental laws and have provided guiding principles for governance and judicial action. Significant **statutory enactments** such as the *Air (Prevention and Control of Pollution) Act, 1981* and the *Environment (Protection) Act, 1986* form the core legal structure regulating air pollution. Supplementary laws, including the *Factories Act, 1948*, *Mines Act, 1952*, and *Kerala Panchayat Raj Act, 1994*, indicate how environmental regulation has been woven into various sectors affecting public health and safety. The establishment of the **National Green Tribunal (NGT)** in 2010 has provided an accessible and effective platform for adjudicating environmental matters. By applying key principles of international environmental law such as the *precautionary principle*, *polluter pays principle*, and *sustainable development*, the NGT has reinforced accountability and encouraged preventive measures. India's **participation in international environmental treaties and conventions**, such as the Kyoto Protocol, UNFCCC, Basel Convention, Stockholm Convention, and Montreal Protocol, showcases the nation's global responsibility toward addressing air pollution. These conventions have influenced domestic legislation and inspired policy reforms aimed at improving environmental quality and protecting atmospheric integrity. However, despite a well-structured legal and constitutional framework, the **implementation and enforcement of air pollution laws remain weak** due to systemic inefficiencies, lack of inter-agency coordination, political will, and public awareness. **Therefore, a stronger synergy between legislation, policy, public participation, and technological innovation is imperative.** Addressing the challenges of air pollution demands not just legal enforcement but also ethical governance, civic responsibility, and long-term environmental planning. The future of clean air in India hinges on the rigorous application of existing laws, judicial vigilance, active local self-governments, empowered regulatory institutions, and a well-informed public determined to uphold their right to a clean and healthy environment.

Judiciary, especially the higher judiciary plays a vital role to combat deterioration in air quality in India by pronouncing many landmark judgements. The Indian judiciary plays a crucial role in the control of air pollution by interpreting and enforcing environmental laws, issuing directives, and ensuring that government agencies and industries take necessary actions to mitigate the adverse effects of air pollution. The Supreme Court of India in *A.K. Gopalan v. State of Madras*²⁰ and *Kharak Singh v. State of U.P.*²¹ held that under Article 21²², the right of

²⁰ *A.K. Gopalan v. State of Madras*, 1950 AIR 27.

²¹ *Kharak Singh v. State of U.P.*, 1963 AIR 1295.

²² *Id* at 26

life does not mean mere animal existence. Further in the Maneka Gandhi's Case²³ 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. 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. Later in 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*²⁴, 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. The Court also 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".

The reference to the famous Dehradun Quarry's case,²⁵ where the Supreme Court entertained complaints from Rural Litigation and Entitlement Kendra, Dehradun (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 case²⁶ as justifying its closure. The Court noted in conclusion that "we are conscious that closure of

²³ *Maneka Gandhi v. Union of India*, 1978 AIR 597.

²⁴ *Subhash Kumar v. State of Bihar*, 1991 AIR 420

²⁵ *Rural Litigation and Entitlement v. State of U.P. & Ors*, 1985 AIR 652.

²⁶ *M.C. Mehta v. Union of India*, [1987] 4 SCC 463.

tanneries may bring unemployment, loss of revenue, but life, health and ecology have greater importance to the people.’²⁷

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*²⁸, 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 that ‘*It would be affordable to carry that the enjoyment of life and its attainment and fulfillment secured by Article 21 of the Constitution embraces the protection and preservation of nature’s gift while not that life can’t be enjoyed.*’²⁹

In the Karnataka High Court judgment of the case *Lakshmiathy v. State of Karnataka*,³⁰ made the observation that ‘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 on top of rulings acknowledge that right to wholesome setting is implicit the Constitutional guarantee of Article 21, but there is a tendency to acknowledge that right to life is not absolute too. If the State guarantees to its voters the safety of life, the voters should owe an obligation to State to take care of its holiness. While the judiciary plays a crucial role in addressing air pollution, it also requires a multi-pronged approach involving legislative

²⁷ Ibid

²⁸ *T. Damodar Rao v. Special Officer Municipal Corporation Hyderabad*, AIR 1987 AP 171.

²⁹ Ibid

³⁰ *Lakshmiathy v. State of Karnataka*, ILR 1991 KAR 1334.

measures, regulatory agencies, technological advancements, public participation, and sustained efforts from all stakeholders³¹.

By critically examining the severe environmental and public health consequences of industrial air pollution in residential areas, with a specific focus on the operations of the Quality Mix unit associated with Tolins Tyre situated in the residential locality of Sanjo Nagar, Muringoor, the findings, gathered through questionnaire method, field observation and analysis, clearly reveal significant non-compliance with established pollution control norms and environmental safety standards. Despite the presence of a well-developed constitutional and statutory framework in India including the Air (Prevention and Control of Pollution) Act, 1981, Environment (Protection) Act, 1986, and judicial interpretations of Article 21 of the Constitution, the situation on the ground reflects a stark gap between law and practice. The existence of unfiltered chimneys, open burning of industrial waste, improper waste disposal, absence of air filtration systems, and neglect of workforce safety point to systematic violations that have compromised the right to clean air and health of the local residents. Residents living in the vicinity of the industrial unit face increased exposure to harmful carbon emissions and toxic pollutants, with elevated risks of respiratory ailments, cardiovascular conditions, skin disorders, and long-term diseases like cancer. These impacts disproportionately affect vulnerable populations such as children, the elderly, and individuals with pre-existing health conditions, thereby deepening environmental injustice. Moreover, the failure of the industry to adopt scientific waste disposal methods, coupled with the inaction of regulatory authorities such as the State Pollution Control Board and local self-governments, has led to unchecked environmental degradation. Despite multiple protests from residents and the visible health implications, regulatory enforcement remains weak or absent, reflecting institutional apathy and governance failure. The Indian judiciary has repeatedly emphasized the “right to life” under Article 21 as encompassing the right to a clean and healthy environment, and has upheld principles such as the precautionary principle, polluter pays principle, and public trust doctrine. However, the lack of enforcement mechanisms and monitoring in places like Sanjo Nagar illustrates how constitutional promises and legal protections can be rendered ineffective without coordinated, proactive, and transparent governance. In conclusion, this project establishes that industrial air pollution, as observed in Sanjo Nagar, constitutes a violation of the fundamental right to health and life. There is a failure to implement environmental laws

³¹ Dr. Madhuri Parikh, 2018. Judicial Interpretation of Law of Public Nuisance for Environment Protection: A Critique, International Journal of Creative Research Thoughts:

and safety regulations, resulting in avoidable public health risks and environmental harm. Stricter regulatory oversight, mandatory environmental monitoring, scientific waste disposal, and effective local governance are urgently needed to mitigate these violations. The findings serve as a call to action for judicial intervention, policy reform, and public empowerment to ensure that economic development does not come at the cost of human life and ecological integrity. A clean environment is not a privilege, it is a constitutional right and a collective responsibility. The findings of this study underscore the urgent need for systemic reforms to uphold this right and ensure sustainable, health-conscious industrial development.

