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RIGHT TO LIVE IN POLLUTION FREE ENVIRONMENT: A CRITICAL ANALYSIS WITH REFERENCE TO ARTICLE 21

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Abstract

Environment and life are interrelated. The existence of life on earth depends on the harmonious relationship between ecosystem and environment. Especially homo-sapiens have very close interaction with nature. Human beings are at the centre of concerns for sustainable development and that they are entitled to a healthy and productive life in harmony with nature. If one is asked which is the most important of all the articles in the Indian Constitution, one can only say - Article 21, which says no persons shall be deprived of his life and liberty - which is the guiding light of India. All the other articles are subservient to this. In other words all articles have been formulated for keeping up this theme song of the Indian Constitution — 'life and liberty' — no person - not just a citizen — no person in India shall be deprived of life and liberty. It is not included as a mere platitude because over the years this article, which was a throbbing article, which was the most dynamic of all articles gathered flesh and with the help of Article 21 - the life and liberty of individuals are protected. Article 21 is the celebrity provision of the Indian Constitution and occupies a unique place as a fundamental right for the people of India. It protects the life and personal liberty. It envisages and aims that no person shall be deprived of his life or personal liberty except to a procedure established by law. Here, right to life includes right to health, right to food, right to pollution free environment, etc. In simple words, Article 21 provides an inbuilt guarantee to a person for right to live with human dignity.

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Introduction

The Constitution of India is the supreme and apex law of the land. It is considered to be one of the significant documents for the country. It entails many rights and duties and other constitutional provisions for the people of India. Part III of the Constitution of India guarantees fundamental rights which are available to citizens and few of them are available to citizens and few of them are available both to citizens as well as non-citizens. One of such provisions is Article 21 of the Indian Constitution which states –

“No person shall be deprived of his life on personal liberty except according to the procedure established by law”.

The words ‘Right to life’ under Article 21 is interpreted broadly and which includes in it the right to live in pollution free and healthy Environment. Pollution free environment has become a serious concern nowadays because unsafe environment cannot sustain the human existence. Considering the present scenario, our environment is deteriorating day by day thereby causing a threat to right to life of every individual. Therefore, Protection of preservation of environment is essential for our cultural values and traditions. It has been rightly quoted in Atharvaveda –

“Man’s paradise is on earth, this living world is the beloved place of all; it has the blessings of nature bounties, live in a lovely spirit”.

Constitutional Provisions

The Constitutional provisions with regard to environmental protection is the need of an hour so as to bring more public participation, environmental awareness, environmental education and also the preservation of ecology.

As stated earlier, the Constitution of India ensures every person a fundamental right to live in pollution free and healthy Environment. The right to pollution free environment is not expressly guarantees anywhere in the constitution but it is assured under Article 21 only. Article 21 is given liberal interpretation by the judiciary so as to put the generic rights under the ambit and domain of Article 21. The Judiciary has broadened the concept of “life” under Article 21 thereby including right to pollution free environment as one of the fundamental right under Article 21. Thus, we can say that Article 21 is a mandate for life saving environment.

In order to have a healthy and safe environment, the constitution of India not only provides it as a right under article 21 but also as a direct principle of state policy under article 47 of the

constitution. Further, Article 48 A imposes a duty on the state to provide for pollution free environment. Article 47 directs the state to raise the level of nutrition and the standard of living and to improve public health as among its primary duties and in particular, the State shall endeavor to bring about prohibition of the consumption of intoxicating drinks and drugs except for medicinal purposes, which are otherwise injurious to health. So in order to have good standard of living and healthy life style, there is a requisite need for pollution free environment. This provision under article 47 was inserted in the constitution of India since its commencement.

Later came the 42 amendment Act 1976 that inserted Article 48 A in the Indian constitution which is read as follows: *“The State shall endeavour to protect and improve the environment and to safe guard the forest and the wild life of the country”*. This provision expressly talks about environment protection and make the State duty bound to incorporate these provisions while legislating on any matter relating to environment protection.

Along with this, it is a fundamental duty of every citizen also to protect and improve the natural environment including forests, lakes rivers and wildlife and to have compassion for the living creatures under Article 51A (g) of the constitution.

So, this provision imposes duty on every citizen to protect and preserve the environment and it is pertinent to note here that these fundamental duties were also added to the constitution of India by virtue of 42nd amendment Act 1976.

Legislations Relating To Environment

There are so many environmental laws in force in India. Some of them are stated as under:-

1. The Public Liability Insurance Act and Rules 1991
2. The National Environmental Tribunal Act 1995
3. The National Environmental Appellate Authority Act 1997
4. The Biomedical Waste (Management & Handling) Rules 1998
5. The Environment (Siting & Industrial Projects) Rules 1999
6. The Municipal Solid Waste (Management & Handling) Rules 2000
7. The Batteries Solid (Management & Handling) Rules 2001
8. The Noise Pollution (Regulation & control) Rules 2010
9. The Air (Prevention & Control of Pollution) Act 1981

10. The Water (Prevention and Control of Pollution) Act 1974
11. Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006
12. The Forest Conservation Act 1980
13. The Wildlife Protection Act 1972
14. The Ozone Depleting Substances (Regulation and Control) Rules 2000
15. The Energy Conservation Act 2001
16. The Biological Diversity Act 2002
17. The National Green Tribunal Act 2010
18. Compensatory Afforestation Fund Act 2016
19. The Environment Protection Act 1986

This legislation was passed under the provision of Act 253 wherein the Parliament has the power to make laws for the country in order to implement any treaty, convention or international agreement. Environment Protection Act 1986 was the result of “Stockholm Declaration” which was an international agreement.

International Conventions on Environment

There have been multiple agreements and conventions for the protection and preservation of the environment. The first and foremost was the United Nations Conference on Stockholm in 1972. It was the first United Nations Convention on environment for the entire world. It elucidated many principles for environment protection like promotion of sustainable development, recognition of quality environment as a part of fundamental right, duty of every man to protect environment, duty of every state to develop such laws which protects environment and promotes sustainable development. As India was signatory Nation to this convention, so it drafted Environment Protection Act 1986 in this regard.

Another International convention was the United Nation Conference on environment and development i.e The Rio Declaration of 1992 which was held in Brazil. Agenda 21, The Rio Declaration on Environment and Development and Sustainable Management of Forest was adopted under this Conference.

Apart from these, following are some more international Conventions that relates to environment protection:

1. Ramsar Convention 1971

2. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) 1973
3. Born Convention 1979
4. Montreal Convention 1987
5. Vienna Convention 1988
6. Basel Convention 1989
7. Convention on Biological Diversity (CBD) 1992
8. United Nation Framework Convention on Climate Change (UNFCCC) 1992
9. United Nation Convention to Combat Diversification (UNCCD) 1994
10. Kyoto Protocol 1997
11. Rotterdam Convention 1998
12. Cartagena Protocol on Biosafety 2000
13. Nagoya Protocol 2010
14. Minamata Convention 2013
15. Paris Agreement 2015
16. Kigaly Amendment 2016
17. COP 24, 2018
18. COP 21, 2016
19. COP 25, 2019

Role of Judiciary in Environment Protection

The Judiciary has always been playing a very prominent role in safe guarding the Environment.

The first environmental Public Interest Litigation (PIL) in India was filed in the case of Rural Litigation Entitlement Kendra v. Union of India. A voluntary organization i.e. Rural Litigation Entitlement Kendra wrote a letter, treated as a petition, to the Supreme Court thereby disclosing the illegal mining activities being carried out in Doon Valley. There was a reduction in the Green Belt from 70% to 10% and also, the quarrying operations had compelled many residents to move from that place and destroyed the homes of many migratory birds. Resultantly, the Supreme Court immediately appointed Bhargava Committee to assess the effect of mining and quarrying activities. The Committee submitted its report and accordingly, the court held that preservation of environment and ecology is not only the duty of State but also the duty of citizens under Article 51A(g) of the Constitution. In that regard, the Court directed the State to pay Rs.10,000 to Rural Litigation Entitlement Kendra for their initiating efforts regarding

restoration of ecology.

In the case of Vellore Citizens Welfare Forum v. Union Of India 1996, the supreme court applied precautionary principle wherein it stated that precautions need to be taken at 1st hand before the environment gets polluted. Along with this, the court applied another principle i.e. Polluter pays principle “which means that the one who will pollute has to pay back to the environment through Government. Justice Kuldeep Singh in this case rejected the idea that development and ecology is two different things. He opined that environment and development go hand in hand and it falls under the concept of sustainable development which was accepted and adopted in Stockholm Declaration of 1972.

This Case is also known as Tamil Nadu Tanneries Case as the petition was filed by the Vellore Citizens Welfare Forum seeking direction to the tanneries as well as Industries which were causing pollution due to the discharge of untreated effluents in the state of Tamil Nadu.

Another landmark case is that of Narmada Bacho Andolan v. Union Of India, AIR 2000 SC 3751 wherein PIL was filed against Sardar Sarovar Project which was to consist of construction of large Dam on river Narmada. The petitioners made an allegation that the project would disturb the ecology. Resultantly, The Supreme Court made a balanced decision by introducing the concept of “Precautionary Principle” which means the development should be made keeping in view all the precautions that it should not hamper the environment. It was further held that the construction of dam was neither a nuclear establishment nor a polluting industry. So it will not disturb the ecology and hence, the construction of dam was allowed.

In the year 2003, there came up MC Mehta v. Union of India case which is also known as CNG vehicles case. A writ was filed under Article 21 of the Indian Constitution regarding the increasing air pollution in Delhi. The Supreme Court held that the provisions under Article 39©, 47 and 48(A) altogether impose a duty on the State to safeguard and improve the environment and also to secure the health of people. The Court reiterated the ‘Precautionary Principle’ and ‘Polluter pays Principle’ thereby desiring the need of ‘Sustainable Development’ i.e. the development should not be made at the cost of environment. Consequently, the Phasing out of Non-CNG buses was recommended by the Supreme Court.

As MC Mehta was considered to be the environmentalist, so he brought up many cases with

respect to protection of environment. In another case i.e. MC Mehta v. Kamal Nath, AIR 2000 SC 213, the Supreme Court evolved the 'Public Trust Doctrine' which implies that the state is to act as a trustee for the public and accordingly, state must preserve the environment for the public. The Court further observed that environmental pollution is a civil wrong and therefore, it becomes a 'Tort' if committed against the whole community. Also, the person who is committing such a tort has to pay compensation i.e. damages for the restoration of the environment and ecology.

In the year 1987 also, M.C Mehta filed a case against Union of India, which came to be known as 'Shriram Food and Fertilizer Case' or 'Oleum Gas Leakage Case'. It is a landmark decision in Indian environmental law. This case was triggered by the leakage of oleum gas from one of the units of Shriram Foods and Fertilizers Industries in Delhi in December 1985, following closely on the heels of the Bhopal Gas Tragedy.

The facts of the case were: Shriram, a subsidiary of Delhi Cloth Mills Ltd., operated several industrial units on approximately 76 acres of land in a densely populated area in Delhi. These units manufactured chemicals such as caustic soda, chlorine, hydrochloric acid, and sulphuric acid.

Following the Bhopal Gas Disaster in 1984, concerns about safety at Shriram's plant prompted government inspections and recommendations for improvements. In March 1985, the dangers of potential leaks from Shriram's caustic chlorine plant were discussed in Parliament, leading to further inspections and safety recommendations. Subsequently, MC Mehta filed a writ petition under Article 32 of the Constitution seeking the closure of Shriram's hazardous industrial units. During the pendency of this petition, an oleum gas leak occurred on 4th December 1985, causing harm to workers and the public, including the death of an advocate. In response, the Delhi administration issued an order under Section 133(1) of the Code of Criminal Procedure, 1973, directing Shriram to stop using harmful chemicals, remove them to a safer place, or appear in court to show cause. The legal proceedings involved multiple writ petitions, with MC Mehta seeking the closure of Shriram's hazardous units and Shriram contesting orders to stop production. The Supreme Court addressed these issues, focusing on the constitutional validity of industrial operations in densely populated areas.

The Supreme Court's final decision in the Oleum Gas Leak Case allowed Shriram to reopen

the caustic chlorine plant under strict conditions. Although the orders by the Inspector and Assistant Commissioner of factories from December 7 and 24, 1985, were not vacated, they were suspended. The Court imposed ten conditions, including regular monitoring by an expert committee, engagement of a plant operator for safety supervision, surprise inspections by the Chief Inspector of Factories, and oversight by a Central Board senior officer on waste management compliance. Shriram's Chairman and Managing Director were required to submit an undertaking accepting liability for future accidents and compensation. The trade unions, Lokahit Congress Union and Karamchhari Ekta Union, were tasked with forming a safety supervision committee, and the management had to train employees and union representatives on safety measures. Information on chlorine gas hazards had to be displayed in both English and Hindi, and employees needed ongoing training and mock drills. The Court also mandated the installation of loudspeakers for emergency warnings and regular medical checkups for employees. Shriram was ordered to pay Rs. 20 lakhs in compensation to oleum gas leakage victims and provide a Rs. 15 lakhs bank guarantee for future compensation claims, to be decided by the District Judge of Delhi in case of injury or death due to chlorine gas leakage within three years.

The Supreme Court, led by Justice P.N. Bhagwati, established the principle of "absolute liability" for enterprises engaged in hazardous activities. The court ruled that: Enterprises engaged in hazardous or inherently dangerous activities that pose potential threats to the health and safety of people must be absolutely liable for any harm resulting from such activities. This liability is not subject to any exceptions, such as acts of God or actions of third parties. The court emphasized that such enterprises have a social responsibility to ensure that their operations do not cause harm. In the event of an accident, they must bear the cost of compensating affected individuals and rectifying environmental damage.

One of the landmark cases that relates to noise pollution is *Church of God (Full Gospel) in India v. K.K.R. Majestic Colony Welfare Association* of the year 2000. In this case the Supreme Court examined the issue of noise pollution. The question before that court was whether beating of drums or reciting of prayers by using of loud speakers thereby disturbing the peace of public should be allowed or not ? The Supreme Court held that no religion prescribed that prayers should be performed by disturbing the peace of others. Furthermore, the Supreme Court observed that the right to religion under Article 25 and 26 is subject to public order, morality and health. Therefore, the court referred Article 19(1)(a) and the Noise Pollution (Regulation

and Control) Rules,2000 and dismiss the appeal.

In another case i.e. Olga Tellis v. Bombay Municipal Corporation, AIR 1986 SC 180; the petitioners challenged the scheme of Government by which pavement dwellers were removed from Bombay pavements. The petitioners argued that removing pavement dwellers from pavements is an infringement of right to livelihood under Article 21 and so it is unconstitutional. The Supreme Court decided that social commitment is *sine qua non* of our Indian Constitution and therefore evicting such persons from their place would amount to violation of Constitution. But in this regard, the court directed the corporation to allocate alternative sites to those slum and pavement dwellers with some reasonable distance of their original sites.

In another very prominent case i.e. Municipal Council, Ratlam v. Shri Vardhichand, the Supreme Court focussed on significance of Article 21. In this case, some of the residents of Ratlam (a city in Madhya Pradesh) filed a complaint before SDM that municipality is not constructing proper drains which causes lot of stink by the exertion of nearby slum dwellers. The municipality argued that we do not have sufficient fund to comply with orders of SDM. The Supreme Court held that pollution free environment is an integral part of 'Right to Life' under Article 21 and accordingly stated that in case municipality needs funds, then the demand should be raised from State Government or request loan from State Government for the complete implementation of court's order.

The list of such case relating to environment goes on and on. The Court had given many directions, order and commands to various authorities in context of environment protection. But as it is a never ending issue, so the judiciary felt a need for setting up a separate Tribunal. The Tribunal will deal specifically only with environmental related issues and resultantly, National Green Tribunal was set up.

National Green Tribunal (NGT)

The National Green Tribunal (NGT) is a specialised authority formed under the NGT Act, 2010 for an effective and speedy disposal of environmental cases. India is the 3rd country in the world after Australia and New Zealand to establish such Tribunal for environment protection. The NGT in India sits at five places, namely, New Delhi (principal place), Bhopal, Pune, Kolkata and Chennai. The National Green Tribunal functions as per the provisions of the National

Green Tribunal Act, 2010 with some of the following aims and objectives:

1. To effectively and expeditiously dispose of all cases relating to protection and conservation of environment, forest, and other natural resources.
2. To give relief and compensation to persons and property for any damages caused.
3. To handle all environmental disputes which involve multi-disciplinary issues.

Therefore, it can be enunciated that the Parliamentarians had enacted this law as well as this independent tribunal in order to promote the core principle of Article 21 of the Indian Constitution.

Conclusion

There is no doubt about it that India had faced biggest environmental disasters. Resultantly, India's progress in environmental law can be witnessed through many legislations which falls under the ambit of Article 21. The Supreme Court of India has also taken broad interpretation of Article 21 so as to become the bedrock of environmental jurisprudence. Even though the Constitution does not explicitly mentions about 'right to pollution free environment' as a fundamental right, still it is understood within the parameters of Article 21. In this regard, the Committee has also been established to review the Constitution and accordingly, many amendments were suggested for ensuring environment protection and nature conservation. Hence, it can be articulated that Article 21 of the Indian Constitution is the mandate for life saving environment.

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