

RIGHT TO ENVIRONMENT AND RIGHT TO HEALTH: MANIFESTATIONS OF HUMAN RIGHTS

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“The earth, the air, the land and the water are not an inheritance from our fore fathers but on loan from our children. So we have to handover to them at least as it was handed over to us.”

-Mahatma Gandhi

The World Health Organization says, health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.² How seriously India has taken health related issues is clear from the statistics given by WHO.

Statistics³

Total population (2012)	1,240,000,000
Gross national income per capita (PPP international \$, 2012)	3,910
Life expectancy at birth m/f (years, 2011)	64/67
Probability of= dying under five (per 1 000 live births, 2012)	56
Probability of dying between 15 and 60 years m/f (per 1 000 population, 2011)	247/159
Total expenditure on health per capita (Intl \$, 2011)	141
Total expenditure on health as % of GDP (2011)	3.9

India is the second largest populated country in the world next to china. It has the potential to benefit from its huge population as labour force as China does. This will be possible only when people are in good health. Good health is directly related to the environment in which people live. The 1972 Stockholm Declaration proclaimed that man’s natural and man-made environment are essential to his well-being and to the enjoyment of basic human rights-even the right to life itself. In 1986, the United Nations General Assembly recognized the relationship between the quality of human environment and the enjoyment of basic human rights⁴. The 1992 Rio Declaration emphasized sustainable development and environmental protection.⁵The basic human right of right to life is meaningless without the right to health and the related rights to environment. This paper is an attempt to find out the constitutional provisions of India focusing on Environment and health and the legislative and judicial response to this issue.

CONSTITUTIONAL PROVISIONS FOCUSING ON PROTECTION OF ENVIRONMENT

Only very few Constitutions in the world have specific provisions related to protection of Environment and health. The Indian Constitution did not originally contain any specific provisions related to protection of Environment. It may be said Article 47 indirectly provided for protection of Environment. Article 47 of the Indian Constitution reads as follows:

“The state shall regard the rising level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties”.

Article 47 provides for the improvement of the public health and it is imposed as a primary duty on the State. This could be interpreted to include protection and improvement of the environment. By later amendments,⁶ few provisions focusing specially on protection of Environment were added

to the constitution.

Article 48 provides that - 'The State shall endeavor to protect and improve the environment and safeguard the forests and wildlife of the country.' This article again insists and imposes duty on the state to protect the environment.

Article 51A (g) imposes a similar responsibility not on the State but on every citizen of the country. It provides that "it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures".

Apart from the above, Article 21 which guarantees the fundamental right to life and liberty has been interpreted very progressively by the Hon'ble Supreme Court of India to include among various other rights, the right to live in a healthy environment. Article 21 which is considered to be the heart of fundamental rights provides that - "no person shall be deprived of his life or personal liberty except according to procedure established by law". This article has been expanded from time to time by the Supreme Court. It guarantees a fundamental right to life - a life of dignity to be lived in a proper environment, free of danger of disease and infection.

Our constitution has laid down these duties and obligations for the protection of our environment. In many circumstances the non-compliance of the statutory norms by polluters resulted in environmental degradation. In such cases environmentalists, NGO's and citizens who were subject to such pollution approached the courts for appropriate remedies. Judiciary interpreted various provisions of law in such a way that best remedy is provided.

ROLE OF JUDICIARY IN PROTECTING THE ENVIRONMENT AND HEALTH

One of the important cases in which the right to live in a healthy environment was recognized by the court is *Rural Litigation and Entitlement Kendra vs. State of U.P.*⁷ (Popularly known as Dehradun Quarrying Case). In this case the issues were relating to environment and ecological balance. It was complained by the R.L. & E. Kendra and others in a letter to the Supreme Court about the illegal / unauthorized mining in the Missouri, Dehradun belt. They pointed out that the ecology of the surrounding area was adversely affected and it led to the environmental disorder. The Supreme Court treated the letter as writ petition under Article 32 of the Constitution. It directed to stop the excavation (illegal mining) under the Environment (Protection) Act, 1986. The court also directed the Central and State Governments to take necessary steps to prevent illegal mining and to re-afforestation in the area of mining.

In '*Oleum Gas Leak*' Case (*M.C. Mehta vs. Union of India*)⁸ the Supreme Court of India interpreted Article 21 of the Constitution and said that the fundamental right to life guaranteed under the Constitution includes the right to live in pollution free environment. Shriram Foods and Fertilizer Industries, Delhi were manufacturers of caustic chlorine and its by-products. They also had plants manufacturing soap, glycerin and technical hard oil. Their manufacturing plants were situated in highly human inhabited area. A writ petition was filed seeking a direction for closure of the various units of Shriram Foods and Fertilizer Industries on the ground that they were hazardous to the community. While the writ petition was pending there was escape of oleum gas from one of the units of Shriram on 4th and 6th December 1985. Applications were filed by the Delhi Legal Aid & Advice Board and the Delhi Bar Association for award of compensation to the persons who had suffered harm owing to escape of oleum gas.

Andhra Pradesh High Court in the case of *T. Damodar Rao vs. S.O., Municipal Corporation, Hyderabad*⁹ laid down that right to live in healthy environment is part of Article 21 of the Constitution. This case was about the Life Insurance Corporation of India acquiring some land in the villages of Gaganmahal, Daira and Bagh Lingampally in Andhra Pradesh for promoting housing schemes.

According to the draft developmental plan published under the legal authority of the Hyderabad Municipal Corporation Act and the Developmental Rules made under that Act those lands were to be used for recreational purposes. A Writ petition was filed by some of the residents who live around the abovementioned area demarcated by the developmental plan as a recreational park. It said many residents of the twin cities are economically backward and poor people and are having insufficient accommodation to live in. They have no open spaces left in front of their houses to relax and recreate themselves and maintain their health. They said Hyderabad Municipal Corporation is bound in law not to allow any part of that land to be used for any purpose other than the one the developmental plan had allocated to it. In this case the court observed that “it is the legitimate duty of the Courts as the enforcing organs of Constitutional objectives to forbid all action of the State and the citizen from upsetting the environmental balance. In this case the very purpose of preparing and publishing the developmental plan is to maintain such an environmental balance. The object of reserving certain area as a recreational zone would be utterly defeated if private owners of the land in that area are permitted to build residential houses. It must, therefore, be held that the attempt of the Life Insurance Corporation of India to build houses in this area is contrary to law and also contrary to Article 21 of the Constitution.

In *Subhash Kumar vs. State of Bihar*¹⁰ the Supreme Court of India held that right to life is a fundamental right under Art. 21 of the Constitution and it includes the right to enjoyment of pollution free water and air for full enjoyment of life.

The Supreme Court of India in *Shanti Star Builders vs. Narayan Totame*¹¹ held that- “right to life is guaranteed in a civilized society would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in”.

Tehri Bandh Virodhi Sangharsh Samiti vs. State of Uttar Pradesh,¹² *Narmada Bachao Andolan vs. Union of India*,¹³ *T. N Godavarman Thirumulpad vs. Union of India*,¹⁴ are few cases out of thousands of cases decided by the Indian judiciary in protecting Environment and health. These cases are testimonies of the fact that the court have developed the ideology that environment is part of the right to life and right to health.

LEGISLATIVE RESPONSE

Legislative response to issue of Environment and health can be traced back to the period of yagnavalkyasmriti. It is mentioned under yagnavalkyasmriti that cutting of trees is prohibited and violators will be punished. Kautalya's Arthashastra stressed the need for forest administration. Ashoka's Pillar Edicts expressed his view about the welfare of environment and biodiversity.¹⁵ During British rule in India several laws related to environment were enacted. Shore Nuisance (Bombay and Kolaba) Act of 1853 and the Oriental Gas Company Act of 1857 were the earliest ones. It was followed by Bengal Smoke Nuisance Act of 1905 and the Bombay Smoke Nuisance Act of 1912. The Indian Penal Code of 1860 also has provisions penalizing environmental degradation. It imposes a fine on anyone who voluntarily fouls the water of any public spring or reservoir. Though these laws were not very successful in protecting the Environment they lead the way for the growth

of environmental regulations in India. The constitution of India enacted after Independence also has provision to protect our Environment which is already discussed. Water (Prevention and Control of Pollution) Act of 1974, the Forest (Conservation) Act of 1980, and the Air (Prevention and Control of Pollution) Act of 1981, the Environment (Protection) Act of 1986 are some of the legislations enacted to protect the environment and in consequence the health of the citizens.

CONCLUSION

Environmental law in India provides for a system of regulation by statutes. However, in India, in spite of the constitutional provisions and legislative enactments, best of the environmental jurisprudence has been developed through writ jurisdiction of the Indian courts which is evident from the above discussion. The development of the concept of public interest litigation under the writ jurisdiction of the Supreme Court and the High Courts of India and Judicial activism have brought a metamorphosis change in environmental Jurisprudence with human rights approach. Protection of Environment does not mean that there should not be any development. It means only sustainable development. In course of time, Indian courts recognized the importance of sustainable development. Through various public interest litigations very important principles like “polluters pay principle” and “precautionary principle” were evolved by courts. The Supreme Court in *Vellore Citizens Welfare Forum v. Union of India and Others*¹⁶ ostentatiously discussed the concept of “sustainable development” which has been accepted as part of the law of the land. It said:

“The traditional concept that development and ecology are opposed to each other, is no longer acceptable. “Sustainable Development” is the answer. In the International sphere “Sustainable Development” as a concept came to be known for the first time in the Stockholm Declaration of 1972.... During the two decades from Stockholm to Rio “Sustainable Development” has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting eco- systems.”

(Endnotes)

- 1 * Associate Professor of Law, Ansal University Gurgaon
- 2 Preamble to the Constitution of the World Health Organization as adopted by the International Health Conference, New York, 19-22 June, 1946; signed on 22 July 1946 by the representatives of 61 States (Official Records of the World Health Organization, no. 2, p. 100) and entered into force on 7 April 1948.
- 3 <http://www.who.int/countries/ind/en/>
- 4 UNGA resolution 2398 (XXII) 1986
- 5 <http://www2.ohchr.org/english/issues/environment/envIRON/bp4.htm>
- 6 Especially the 42nd Amendment Act, 1976
- 7 AIR 1988 SC 2187
- 8 AIR 1987 SC 1086
- 9 IR 1987 A.P. 171
- 10 (1991) 1 SCC 598,
- 11 1990(1) SCC 520
- 12 1992 SUP (1) SCC 44
- 13 AIR 1999 SC 3345
- 14 2000 SC 1636
- 15 http://en.wikipedia.org/wiki/Environmental_issues_in_India (visited on March 24, 2016)
- 16 MANU/SC/0686/1996