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The Right to Live In Healthy and Pollution Free Environment: A Perspective on Indian Constitution

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Abstract

Man has the fundamental right to freedom, equality and adequate conditions of life. Connecting human rights and environment is a valuable sourcebook that explores the uncharted territory that lies between environmental and human rights legislation. The present paper seeks to discuss the provisions stated in Indian Constitution that ensure the rights to live in a healthy and pollution free environment. In India the concern for environment protection has not only been raised to the status of fundamental law of the land, but it is also wedded with the human right of every individual to live in pollution free environment with full human dignity. Article 14, 21, 47, 48 (A) protect the right of the people to live in healthy environment as a rider to balance the ecological imbalance. Article 51-A (g) specially deals with fundamental duty with respect to environment that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.

Keywords: Human rights, healthy environment, Indian constitution, fundamental duties.

Introduction: Our Environment is our surrounding, includes living and non-living things around us. The non-living components of environment are territory, water and air¹. While the living components are microorganisms, plants, animals and human being. Environmental quality help to determine whether people are healthy or not, and how long they live. Quality of environment influences reproductive health and choices, and also determine prospects for social cohesion and economic growth for any nation. Modifications in the environment in forms of pollution and degradation, climate change also affect prospects for health and development². If we look at human society from a historical point

of view, we comprehend that protection and preservation of the environment has been important to the cultural and religious ethos of most human communities³. Over the years, the international communities and organisations have increased its consciousness on the relationship between environmental degradation and human rights abuses. It is established that, poverty situations and human rights abuses are worsened by environmental degradation. Such as, the over exploitation of natural resources leads to unemployment and emigration to cities; secondly, this affects the enjoyment and exercise of basic human rights, for example, environmental conditions contribute to a large extent, to the spread of infectious diseases; thirdly, dreadful conditions poses new problems such as environmental refugees. Environmental refugees suffer from significant economic, socio-cultural, and political consequences^{4,5}. Therefore, speaking of rights is reasonable and useful for dealing with some of the most serious human consequences of environmental degradation. In particular, the right to a safe and healthy environment can play a useful and justifiable role in protecting human interests in a safe environment and in providing a link between the environmental and human rights movements^{6,7}. Almost every nation has responded with a legal establishment that attempts to ensure environmental protection. These environmental laws and schemes come in various forms. Some nations place environmental protection at the highest level, securing it within a national constitution, while others consign it to the statutory level. Some nations have positive rights, placing a duty on the government to look after the environment⁸. In India, the concern for environmental protection has not only been raised to the status of fundamental law of the land, but it is also wedded with human rights approach⁹.

Regional and International Bodies on Healthy Environment and Human Right and India's Obligations: The right to a healthy and pollution free environment is recognised at both international and regional levels and now there are number of international and regional instruments of human rights around the world. Article 11 of the *San Salvador Protocol* (1994), states that (1) everyone shall have the right to live in a healthy environment and to have access to basic public services; (2) the state parties shall promote the protection, preservation and improvement of the environment¹⁰. The article 24 (2) of the *Convention on the Rights of the Child* (1989) involves State parties in the matter of fighting disease and malnutrition to take into consideration, the damage and risks of environmental pollution¹¹. The *African Charter on Human and People's Rights* (1981) declares in Article 24 (1) a right to a common satisfactory environment favourable to their development. The Inter-American Court of Human Rights also recognised links between the environment and human rights¹². The case of *Awas Tingni Mayagna Indigenous Community v. Nicaragua*, involved the protection of Nicaraguan forests in lands traditionally owned by the Awas Tingni. Government-sponsored logging on this native land was found to be a violation of the human rights of these tribals by the commission¹³. The European Convention on Human Rights has also been invoked in environmental issues. In Europe, most of the victims invoke either the right to information or the right to privacy guaranteed under the Convention. It has been recognized that pollution or other environmental harm can result in a breach of

one's right to privacy and family life¹⁴. In March 2012, the Human Rights Council of United Nations created a new three-year mandate on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and suitable environment¹⁵. India is a signatory to several international treaties and agreements relating to regional or global environmental issues. India has participated in the *Stockholm Conference* (1972), *UN Conference on Environment and Development* (1992) at Rio de Janeiro and Earth Summit at New York (1997). The first principle of the Stockholm Declaration was that man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality and permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations^{16,17}. The then Prime Minister Mrs. Indira Gandhi, at Stockholm voiced deep concern about the degradation of the environment and eco-imbalance. She also underlined that pollution, population and poverty are inter-related problems and there must be an integrated approach to deal with them. Article 51(c) of Indian Constitution provides that the State shall endeavour to foster respect for international law and treaty obligations in the dealings of organized people with one another. Under Article 253, parliament is empowered to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body¹⁸.

Constitutional provisions to live in healthy and pollution free environment in India:

The Indian Constitution reflects the human rights approach to environmental protection through various constitutional mandates. In India the concern for environment protection has not only been raised to the status of fundamental law of land, but it is also devoted with the human right of every individual to live in healthy and pollution free environment with full human dignity. The Constitution of India obligates the State as well as citizens to protect and improve the environment¹⁶. During the last two decades of last century, the Indian legal system particularly in the field of environmental law, underwent a sea change and new horizons of social justice were charted out. The Indian Constitution contains specific provisions for environment protection under the chapters of Directive Principles of State Policy and Fundamental Duties. The absence of a specific provision in the Constitution to recognise the fundamental right to live in clean and healthy environment has been set off by judicial activism.

Article 14: The right to equality is enshrined in Article 14 of the Constitution. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India¹⁸. The right to equality may be infringed by government decisions which may have dreadful impact on the environment, particularly in cases, where permissions are arbitrarily granted, for example, for construction, that are in contradistinction of development regulations or for mining without adequate appreciation of environmentally damaging consequences. Environmentally conscious groups have resorted to take legal proceedings under Article 14 to challenge the constitutional validity of the arbitrary official sanctions in such matters²⁰.

Article 21: Article 21 protects the right to life and liberty as fundamental rights. It states that no person shall be deprived of his life or personal liberty except according to procedure established by law¹⁸. Enjoyment of life and its accomplishment including their right to life with human dignity encompasses within its sphere; the protection and preservation of environment from pollution of air and water, sanitation is essential without which life cannot be enjoyed. Any contracts or actions would cause environmental pollution should be regarded as amounting to violation of Article 21. Therefore, hygienic environment is a basic aspect of right to healthy life and it would be not possible to live with human dignity without a benevolent and healthy environment. Environmental protection, therefore, has now become a matter of grave concern for human existence²¹.

Article 47: Article 47 of the Constitution is considered to be more important, because it imposes the primary duty on the State to provide public with improved health, raised level of nutrition and ultimately improved standard of living. Public health can be assured to the public only by offering the safe and protected environment to live in. This enabled the framers of our Constitution to be more conscious on the environmental concern¹⁸.

Article 48-A: Protection and improvement of environment and safeguarding of forests and wild life: The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country¹⁸.

Article 51 (A): The Constitution (Forty-Second Amendment) Act, 1976 added a new part IV-A dealing with Fundamental Duties in the Constitution of India. Article 51-A (g) specially deals with fundamental duty with respect to environment that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures¹⁸.

Landmark Cases of Human rights to live in Healthy Environment in India: In modern times industrial development has created the problem of ecological imbalance all over the world. Industries in general and hazardous industries in particular have been posing a continuous threat to the environment. The Supreme Court of India tried to evolve the right of the people to live in healthy environment as a rider to balance the ecological imbalance. The issue relating to environment and ecological imbalance was invoked before the court for the first time in *R.L. & E. Kendra, Dehradun Vs. State of U.P.* where the Court directed the closure of limestone quarries²⁰.

Olga Tellis & Ors Vs. Bombay Municipal Corporation (1985): The right to life guaranteed by Article 21 includes the right to livelihood. In *Olga Tellis v. Bombay Municipal Corporation*, a case brought by pavement dwellers to resist eviction from their habitat by the BMC, the Supreme Court argued that the right to livelihood is born out of the right to life as no person can live without the means of living²².

Kinkari Devi Vs. State Justice (1988): Judge P.D. Desai remarked that there is both a constitutional pointer to the state and a constitutional duty of the citizens not only to protect but also to improve the environment and to preserve and safeguard the forest, the flora and

fauna, the rivers and the lakes and all other water resources of the country. The neglect or failure to abide by the pointer or to perform the duty is nothing short of betrayal of the fundamental law which the state and indeed the every Indian is bound to uphold and maintain²³.

Subhash Kumar Vs. State of Bihar (1991): Again the apex court held that the right to get pollution free water and air is a fundamental right under Article 21. Following this decision, the right to pollution free environment was incorporated under the head of right to life and all the law courts within the Indian territory were bound to follow the same. This laid down the foundation of environmental litigation in India²⁴.

M C Mehta Vs. Union of India (1992): The Supreme Court noted environmental pollution due to stone crushing activities in and around Delhi, Faridabad and Ballabhgarh complexes and said that every citizen has a right to fresh air and to live in pollution free environment. The Court issued directions to the stone quarries to stop their activities in these areas and directed the government to rehabilitate them in crushing zone within six months²⁵.

M. C. Mehta Vs. Kamal Nath (1996): In the State of Himachal Pradesh, Span motel, owned by the family members of Shri Kamal Nath, Minister for Environment and Forests, Govt. of India diverted the Course of river Beas to beautify the motel and also encroached upon some forest land. The apex court ordered the management of the Span motel to hand over forest land to the Govt. of Himachal Pradesh and remove all sorts of encroachments. The Court delivered a land mark judgment and established principle of exemplary damages for the first time in India. The Court said that polluter must pay to reverse the damage caused by his act and imposed a fine of Rs Ten Lakhs (Rs 10,00,000) on the Span motel as exemplary damages. The Supreme Court of India recognized Polluter Pays Principle and Public Trust Doctrine²⁶.

Sher Singh Vs. State of Hp (2014): The citizens of the country have a fundamental right to a wholesome, clean and decent environment. The Constitution of India, in terms of Article 48A, mandates that the State is under a Constitutional obligation to protect and improve the environment and to safeguard the forest and wild life in the country. By 42nd Amendment to the Constitution, the Parliament, with an object of sensitizing the citizens of their duty, incorporated Article 51A in the Constitution, inter alia, requiring a citizen to protect and improve the natural environment including the forests, lakes, rivers and wild life and to have a compassion for living creatures. The legislative intent and spirit under Articles 48A and 51A(g) of the Constitution find their place in the definition of 'environment' under the *Environment (Protection) Act*, 1986. The legislature enacted various laws like the *Air (Prevention and Control of Pollution) Act*, 1981, *Water (Prevention and Control of Pollution) Act*, 1974 and the *Wildlife (Protection) Act*, 1972, the *Forest (Conservation) Act*, 1980, the *Indian Forest Act*, 1927 and the *Biological Diversity Act*, 2002 and other legislations with the primary object of giving wide dimensions to the laws relating to protection and improvement of environment. It is true that Part III of the Constitution relating to Fundamental Rights does not specifically devote any Article to the Environment

or protection thereof per se. However, with the development of law and pronouncement of judgments by the Supreme Court of India, Article 21 of the Constitution has been expanded to take within its ambit the right to a clean and decent environment. The risk of potential harm to the environment and human health resulting from development should be considered by somewhat tilting the balance in favour of the environment and in the larger public interest²⁷.

Conclusion: Man has the fundamental right to adequate conditions of life to live in healthy and pollution free environment. In an environment of equality that permits a life of dignity and well-being and bears a solemn responsibility to protect and improve the environment for present and future generations. Connecting human rights and environment is a important sourcebook that explores the uncharted territory that lies between environmental and human rights legislation. The Constitution of India is a comprehensive and well drafted Constitution containing elaborate provisions. In addition the *Water Act(1974&1988)*, *Air Act (1981)* and the *Environment Protection Act (1986)* also contain detailed provisions for the protection of the environment. However, in spite of various provisions in the Constitution, legislative enactments and court's decisions and monitoring, the situation is not encouraging as the laws are not being implemented in the true spirit. The need of the hour is that there should be proper implementation of the laws for achieving sustainable development by generating an atmosphere of responsiveness. Moreover, consciousness of people about importance of environmental sustainability is not satisfied in India. The people of India is also not so much aware about their constitutional rights and duties although Chipko Movement, Narmada Bachao Andolon, Silent Valley movement are some signs of movement for healthy and pollution free environment. The Government of India has launched various programmes and made use of audiovisual media to educate the people and arouse their consciousness for the protection of environment.

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