

Critical Analysis of Right to Pollution Free Environment under Article 21 of the Constitution

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Abstract: The Indian Constitution is one of the few in the globe with the particular environmental protection clauses. The Fundamental Rights and Directive Principle of State Policy explicitly govern the domestic dedication to defend and improve the environment. In articulating these measures, the Indian judiciary has created a doctrinal web to safeguard human rights and to promote the cause of environmental justice and remind people of their basic obligation for the preservation of the environment by taking shelter in fundamental rights and fundamental duties as mentioned in the Constitution of the Republic of India. This present paper attempts to evaluate the constitutional regulations on environmental protection and the Indian judiciary's notable role in interpreting these provisions for environmental justice in India. This idea of provision of the Right to Healthy Environment was not included when the Constitution was drafted and approved by the Constituent Assembly. For instance, the topics in the state list on which the state can create regulations are government health, hygiene, agriculture, soil, water, and fisheries. The Union List includes items such as nuclear energy, oil fields and resources, interstate rivers and valleys, and fisheries for which only Parliament has the power to make laws. The Preamble to the Constitution clearly shows that socio-economic justice is the foundation of the Constitution.

Keywords: Constitution, Article 21, Environment, Pollution, Fundamental Right, DPSP

1. Introduction

As we know that socio-economic justice is the foundation stone of the Preamble of the Republic of India. Part 3 of the Indian Constitution deals with Fundamental Rights like right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights and right to Constitutional remedies. Hence, the Indian judiciary has widened the scope of these Fundamental Rights in order to achieve environmental justice

The Indian Constitution is amongst the few Constitution in the world that mentions some of the provisions of environment protection. It is known to all the legal and juristic personalities of India that the idea of environmental protection was not in the minds of the founding fathers of the constitution. There are no single provisions of the same in the constitution when originally drafted. India is facing the problem of environmental pollution for decades but during those time because of less industrialization and not the factor of globalization, the requirement of environmental protection was not felt to the constitution-makers but the scenario has changed till now with the rise of modernization so pollution in India has become so grave. Roughly 70 percent of the population in India alone relies directly on land-based occupations, forests, wetlands and marine habitats, fundamental subsistence requirements in terms of water, food, fuel, housing, fodder, and medicine, as

well as ecological livelihoods and cultural support. It is not surprising that the culture of societies is so significantly affected by their surroundings, given this close interdependence of beings and their environment. The term 'Life' mentioned in Article 21 has played a key role in interpreting the provisions of environmental justice by the judiciary. Although several statutes have been created to safeguard the environment from pollution and for the implementation of these statutes, administrative machinery was placed in place. The power-sharing scheme between the center and the state, however, enabled the respective government to take the necessary steps to protect the environment.

Parliament and the Indian state legislatures have the power to make laws within their respective jurisdictions, according to the Constitution. This power in nature is not absolute. In the judiciary, the Constitution holds the power to judge the constitutional validity of all laws. If any provision of the Constitution is violated by a law made by Parliament or the state legislatures, the Supreme Court has the authority to invalidate or ultra vires such a law. The founding fathers, despite this check, wanted the Constitution rather than a rigid governance framework to become a flexible constitution which can become accommodate to the necessitate changes.

Judicial interpretation by the Supreme Court of India of Article 21 of the Indian Constitution and its activism has played a key role in interpreting Article 21. It examines the reasons for the creativity of the judiciary and justifies the role played by India's Supreme Court in protecting citizen's basic freedoms when the legislative and executive failed to fulfill their responsibilities. It will be available not only to all the citizens of that country, but also to be a person who is not a citizen of that country, according to the tenor of the language used in Article 21. Through the constitutional regulations, even those who are not a citizen of this nation and come here simply as visitors or in other capacities are entitled to their life. As in the event of **Chairman, Railway Board v. Chandrima Das**, they also have a right to "Life" in this nation.

The Traditional Approach of the Supreme Court

Without an overview of the traditional strategy, it is difficult to fully understand how far rights are being developed. The traditional interpretation of Article 21 of the Constitution in the case of **A. K. Gopalan v. Union of India** was that a legal procedure can deprive an individual of his right to life. Thus, this provision's earliest interpretation was a limited and procedural one. The state had to show that the interference with the right to life of the individual is granted in accordance with the procedure established by the law correctly implemented.

It didn't matter if the law was reasonable and fair. Furthermore, in the case of Gopalan, the Court refused to impose the guarantee of due process of law contained in Article 21 with substantive content, arguing that, as long as the statutes of preventive detention had been duly enacted in accordance with the procedures of Article 22, the requirements of due process had been met. The judgment in the case of Maneka Gandhi of the Constitutional Bench of Seven Judges (overruling the case of Gopalan) became the starting point for a dramatic legal development in (individual) human rights instances. Thus, the principle laid down in this case by the Supreme Court is that the procedure laid down by legislation to deprive an individual of his right to life must be just, reasonable and fair. In **Maneka Gandhi's case**, the new interpretation of Article 21 has innovated a new era of expanding the horizons of the right to life and personal freedom. The broad dimension provided to this right now includes multiple aspects that may or may not have been visualized by the constitution's founding fathers. The term "law-based procedure" is the same as the Fifth Amendment of the US Constitution. Even if the term "due" is not specifically stated in Article 21, the Supreme Court interpreted the term more broadly and dynamically in its numerous decisions.

Article 21 of the Constitution: An Environmental Interpretation

Article 21 states that 'No person shall be deprived of his life and personal liberty other than the procedure established by law.' The right to live with dignity and the right to livelihood has been declared as constitutional rights in India. Supreme Court has expanded the scope of Article 21 by granting the right to life and personal liberty and the right to a clean environment.

In the case of **Subhash Kumar v. State of Bihar**, there was the discharge of industrial pollution into a river, the Supreme Court, in this case, noted that article 21 includes right to life and enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers the quality of life a citizen can file a suit under Art. 32 for removing the pollution of water or air which may be dangerous for life.

The Supreme Court established a new concept in the case of **M.C. Mehta v. Union of India** where this case deals with vehicular pollution in the Delhi, it was held that it's the duty of government that air should not tarnish due to vehicle pollution, the Supreme Court directed that heavy, medium or light-goods vehicles not conforming to Euro II norms or not using low sulphur, low benzene fuel and plying on Inter-State routes were not to be allowed to pass through Delhi. In this case, Supreme Court established the new concept that the liability of the

enterprises is 'absolute and cannot be delegated' for the disaster arising from the storage or use of harmful materials from their factories, the enterprises will be held liable irrespective of the fact that they have taken proper care or not.

Similarly, ecology and public health were to be prioritized under Art.21 in the case of **Ratlam Municipality v. Vardicha**, where the pollution was due to private polluters and unplanned town planning, it was held by the Supreme Court that the pollution-free environment is part of Art. 21. The protection of 'life' under article 21 was the key attraction of High courts in the case of **T Damodar Rao and Ors. v. The Special Officer, Municipal**, in this case, a park was ordered to be converted into a residential area court, in this case, Court said that it is contrary to Art. 21 as Justice Chaudhary said that 'protection and preservation of nature's gift without which life cannot be enjoyed' and this is according to judge was a part of Art. 21.

Most of the environmental cases are related to pollution of hazardous gases, wastes disposal, etc. the world industrial disaster took place in the year 1984 which is referred to as the '**Bhopal Gas Disaster case**' (**Union Carbide Corporation v. Union of India**) The Bhopal plant of Union Carbide India Ltd (UCIL), an Indian company which was a subsidiary of the Union Carbide Corporation, USA (UCC) was set up. On the midnight of 2-3 December in 1984, there was a massive leak of methyl isocyanide from this plant which killed more than 3000 persons and serious personal injuries. The whole surrounding was covered with the black smoke of hazardous chemical gas. But the Court could not reach any conclusion that by the time another disaster happened in Delhi which was not as that severe as the Bhopal tragedy.

This other incident was referred to as the **Oleum Gas Leakage case**. In this case, there was a leak of Oleum Gas from a factory in Delhi of Shriram Foods and fertilizer Industries which enveloped the parts of Delhi in yellow smoke. Although the chemical gas was not that toxic and harmful as that was in the Bhopal gas case, there were some adverse effects to the people living in that surrounding. Through this case the only rule of 'absolute liability' established which says that the enterprise will be liable no matter even if there is an act of God like an earthquake, floods, etc. or an act of terrorism or enemy action. The Court suggested that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegate duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken and therefore, such corporations would be subjected to the limitations of right to life under Article 21 of the constitution. The effects of this tragedy were so adverse, people developed many diseases. This incident happened a long time back but the after-effects are still known. The mothers who were pregnant at that time gave birth to disables children and children suffering from severe diseases. If a person is not able to live his life properly, his health is not perfectly fine then, his/her life cannot be said to be a dignified life. Such type of corporations for their profits does not take care of the after-effects of their activities and the result is in front of all of us.

Another landmark case that also supported the view that the right to a healthy environment is part of life under Article 21 of the Constitution is the '**Ganga Pollution case**. In this case, a writ was filed mentioning that the industries mostly tanneries located on the banks of the river and populated areas of Kanpur and Calcutta were discharging highly toxic trade effluents into the river Ganga. As a result of which the water in the river Ganga could no longer be used by the people either for drinking or any other purposes. The Court held that 'the polluting tanneries have to be closed down even though it would bring unemployment, loss of revenue because the preservation of life, health and ecology are the most important than anything else'. It's not just about the life of the people who get affected, also the animals who drink this water. Although they cannot go to the Court that does not mean their life is nothing. So, the water-pollution problems (especially discharging poisonous matter into rivers) should be dealt with strictness. Now the other aspect is that of smoking. People smoke after knowing the ill effects of smoking. When people smoke, these harmful substances get mixes in the air which we breathe therefore is responsible for various fatal diseases including cancer.

In the case of **Murli S. Deora v. Union of India**, the contention was raised that smoking is injurious to health and may affect the health of smokers but there is no reason that the health of passive smokers should also be injuriously affected. Since Art. 21 guarantees that no one shall be deprived of their life, it was held that it would be in the interest of the citizens to prohibit smoking in public places and the person not indulging in smoking cannot be compelled to passive smoking on account of the acts of the smokers.

In the case of **Rural Litigation and Environment Kendra, Dehradun v. State of Uttar Pradesh** the representatives of Rural Litigation Kendra Dehradun wrote to the Supreme Court alleging that illegal limestone mining in the Mussorie- Dehradun region was causing damage to the environment, the court treated this letter as public interest petition under Article 32 of the Constitution.

Therefore the Court ordered the closure of several limestone quarries the Constitution of India originally adopted, did not contain any direct and specific provision regarding the protection of the natural

environment. Perhaps, the framers of the Indian Constitution, at that time, considered it a negligible issue. However, it contained only a few Directives to the State on some aspects relating to public health, agriculture and animal husbandry. These Directives were and are still not judicially enforceable. Some of the Directive Principles of State Policy showed a slight inclination towards environmental protection i.e. Article 39(b), Article 47, Article 48 and Article 49 individually and collectively impose a duty on the State to create conditions to improve the general health level in the country and to protect and improve the natural environment. Later through a constitutional amendment, two specific provisions i.e. Article 48-A and Article 51-A (g), have been added which imposes the duty on the state as well as the citizens of the state to protect and conserve the environment.

National Green Tribunal – the Guardian of Environment

National Green Tribunal was established in 2010 under Article 21 of the Indian Constitution which guarantees the citizen of India the right to a healthy environment. India is the third country following Australia and New Zealand to have such a system. The tribunal is a special fast-track quasi-judicial body comprising of judges and environment experts who will ensure fast disposal of cases.

In India, the higher judiciary is loaded with an excessive weight with a large backlog of cases. It may be appreciated that to have effective prevention of environmental pollution and environmental complaints should be decided in an efficient manner which is not possible in the present context of judicial administration. Therefore the urgent need was felt for an alternative forum so that environmental cases were resolved without much delay. India's Environmental Court as a result of the need repeatedly expressed by the Constitutional Courts on the need to have a specialized judicial body to deal with complex environmental questions. The trigger for setting up Environmental Courts was through the Supreme Court of India which in its judgment highlighted the difficulties faced by Judges in adjudicating on Environment.

The Supreme Court of India in its judgment referred the needs for establishment of the environmental court which would have the benefit of expert advice from environmental scientists and technically qualified persons as a part of the judicial process, after an elaborate discussion of the views of jurists in various countries. The Supreme Court has also opined that as environment cases involve assessment of scientific data it would be desirable to have the setting up of 'environmental courts on a regional basis with a professional judge and two experts keeping in view the expertise required for such adjudication'. In the case of **Indian Council for Environmental Action v. Union of India** the Supreme Court observed that the environmental Court having Civil and Criminal jurisdiction must be established to deal with the environmental issues speedily.

In the case of **Charan Lal Sahu v. Union of India**, the court opined that under the existing civil law damages are determined by the civil Courts, after a long drawn litigation, which destroys the very purpose of awarding damages so in order to meet the situation, to avoid delay and to ensure immediate relief to the victims, the law should provide for constitution of tribunal regulated by special procedure for determining compensation to victims of industrial disaster or accident, appeal against which may lie to this Court on the limited ground of questions of law only after depositing the amount determined by the tribunal.

The National Green Tribunal has the power to hear all civil cases relating to environmental issues and questions that are linked to the implementation of laws listed in Schedule I of the National Green Tribunal Act. These included the following-

- The Water (Prevention and Control of Pollution) Act, 1947
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- The Forest (Conservation) Act, 1980
- The Air (Prevention and Control of Pollution) Act, 1981
- The Environment (Protection) Act, 1991
- The Public Liability Insurance Act, 1991
- The Biological Diversity Act, 2002

This Act confers on the Tribunal, the jurisdiction over all civil cases where a substantial question relating to the environment (including enforcement of any legal right relating to the environment) is involved and such question arises out of the implementation of the enactments specified in Schedule I to the Act. It further provides a time-limit of six months within which the applications for adjudication of a dispute under this section shall be entertained by the Tribunal. It also empowers the Tribunal to allow such applications to be filed within a further period not exceeding sixty days if it is satisfied that the application was prevented by sufficient cause from applying within the said period.

The term 'substantial question relating to environment' is defined under the act shall include an instance where:-

- (1) There is a direct violation of a specific statutory environmental obligation by a person by which:-

- a) The community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or
 - b) The gravity of damage to the environment or property is substantial; or
 - c) The damage to public health is broadly measurable;
- (2) The environmental consequences related to a specific activity or a point source of pollution. This means that any violations pertaining only to these laws, or any order/decision taken by the Government under these laws can be challenged before the National Green Tribunal.

Polluter Pays Principle

The 'polluter pays' principle is the commonly accepted practice that those who produce pollution should bear the costs of managing it to prevent damage to human health or the environment. For example, a factory producing a potentially poisonous substance is usually responsible for its safe disposal in its activities as a by-product. It is one of the principle opted for sustainable environment conservation in the 1992 Rio Declaration.

The polluter pays principle extends the absolute liability principle. The principle of absolute liability is invoked irrespective of whether the person has taken reasonable care or not, making him liable to compensate those who have suffered because of his inherently dangerous activity. The polluter pays principle extends the polluter's liability to the cost of environmental damage. The polluter pays principle extends the scope of the principle of absolute liability. The importance of this principle is that it is possible to remedy the damage to the environment and this is essential for sustainable development. The polluter is liable to pay the costs as well as the costs of reversing the damaged ecology to the individual sufferers.

Although the polluter pays principle holds the potential to protect the environment, it was not part of India's law until it was invoked as late as 1996 in the **Enviro-Legal Action case**. In this case, the Court affirmed and extended the principle of absolute responsibility as set out in the case of **Oleum Gas Leak**. The court ruled, "The polluter pays principle requires that the financial costs of preventing or eliminating pollution-related damage should be in the undertakings that cause pollution or produce the goods that cause pollution." The judgment of the above case on the polluter pays principle and the justification for invoking it was reaffirmed by another Bench in 1996, in the case of **Vellore Citizens Welfare Forum v. Union of India**. In these cases, the use of the principle of polluter pays was justified through the constitutional mandate, statutory provisions, and customary international law.

Absolute Liability

While recognizing the principle of 'Absolute Liability' in the case of **M.C. Mehta v. Union of India**, the Supreme Court took the help of the absolute liability principle which was recognized in the case of **Ryland v. Fletcher**. In this case, the defendants employed independent contractors on their land to build a reservoir. When digging, the contractors found disused mines but failed to properly seal them. The reservoir was filled with water. As a consequence, the water flooded into the mines on the adjacent property of the plaintiff. At Liverpool Assizes, the plaintiff secured a verdict. The Chamber of the Court of Exchequer held the defendant liable and affirmed their decision by the House of Lords. The reasoning used in this case was that if the person knows that he has brought something dangerous which has the chance of causing damages by its escape even though there was no negligence on the part of that person. The conclusion is that liability does not arise because of the fault of that person but on the account of the escape of that dangerous thing which has caused damage.

Application of This Principle to Greenhouse Gas Emission

The majority of pollution regulations on soil, water and air are supported by this principle. Pollution is defined as land, water or air contamination by harmful or potentially harmful substances in UK law.

The polluter pays principle has also been applied more specifically to greenhouse gaseous emissions that are responsible for climate change in part of a set of wider principles that guide sustainable development throughout the world (officially called the 1992 Rio Declaration).

Emissions from greenhouse gases are regarded as a form of pollution as they cause potential harm and damage through climate effects. In this situation, however, because society has been slow to acknowledge the connection between greenhouse gasses and climate change, and because some consider the atmosphere to be a 'worldwide commons' (that everyone shares and has the right to use), emitters are usually not held accountable for regulating this type of pollution.

If the pollution costs resulting from the release of greenhouse gases are not imposed on emitters, these costs are, therefore 'externalized' to society, representing what economists describe as a 'market failure'. Society

bears these expenses as greenhouse gases are emitted into the environment, which everyone shares and has the right to use, is defined as a worldwide commons.

Applying the Principle through a Carbon Tax or Emissions Trading System

The polluter pays principle can be applied to greenhouse gas emitters by means of the so-called carbon price. This imposes a greenhouse gas emission charge equal to the associated potential price created by future climate change—forcing emitters to internalize pollution costs. In this way, a financial incentive is created for a factory, for example, to minimize its pollution costs by reducing emissions.

Many economists contend that the carbon price should be worldwide and consistent across nations and industries to ensure that polluters do not just shift activities to so-called 'pollution heaven', where a lack of environmental regulation allows them to continue to pollute without restrictions.

The carbon price can make the polluter pay through two different policy instruments. The first is a simple price-based system in the form of a carbon tax, where the pollution price is determined by the tax rate for each ton of greenhouse gas emitted. The second type involves a quota system, often known as a cap-and-trade or emission trading system. This establishes a ceiling, or limit, for a specified time period to the maximum rate of emissions and distributes licenses or allowances for each unit of greenhouse gas among companies producing emissions.

2. Conclusion

The Supreme Court, respected by the elite and the illiterate, is India's most respected public institution. If, as the last arbiter of justice, the Court is more efficient than it is, it is due to the trust that the common person has put in them. The Court has no command of the military. It doesn't hold any purse string. Its power lies in its control of the public hearts and minds and how it can impact public opinion and shape it. The protection of the environment has become a matter of domestic concern and is therefore strictly taken up by the judiciary.

The National Green Tribunal is making one more innovation by imposing a rigorous punishment for failing to comply with the court's order. This enables the order of the court to be executed. The existing legislation offers for the central government's interference and control in court cases and procedures that should be prevented by giving the tribunal unrestricted control in the process of deciding the matter inherently.

Today, for some disadvantaged people, Article 21 has become a living truth; it is mainly because of the Supreme Court's expansive interpretation of the provision. The result was a profound revolution—for social justice—which has always been achieved by peaceful means. It was, in fact, a revolution led by the judge. This judicial renaissance is accountable for broadening India's enviro-justice horizons. Thus, after all of the aforementioned instances, it becomes apparent that while restricted in many respects by its judicial dynamism, the Indian judicial system has developed as a savior of humanity.

Article 21 is the key chosen to extend the scope of application of the provisions of law. The judiciary also has to attain the constitutional objective of socio-economic justice in accordance with articles 32 and 226. The Supreme Court has conquered the faith of millions of Indians by these people's friendly decisions, mainly on this constitutional provision, even though the decision has been delayed. Let us all applaud the development of this neo-Indian Constitution jurisprudence.

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