



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2024 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Article 21 of the Indian Constitution and Environmental Rights Jurisprudence

Happy Kushwah^a

^aICFAI University, Jaipur, India

Received 20 March 2024; *Accepted* 24 April 2024; *Published* 29 April 2024

*The interconnectedness between Article 21¹ and environmental rights jurisprudence is profound, reflecting a mutually beneficial relationship between individual rights and environmental protection. Article 21 secures the fundamental right to life and personal liberty, which courts have expansively comprehended to encompass the right to a clean and healthy environment. This interpretation signifies that environmental degradation not only poses threats to human health and well-being but also infringes upon fundamental rights. Environmental Rights Jurisprudence has emerged through judicial activism, wherein courts have recognized environmental protection as intrinsic to ensuring a dignified life for citizens. Many cases such as *Rural Litigation and Entitlement Kendra Dehradun v State of Uttar Pradesh*² and *M.C. Mehta v Union of India*³ have established precedents where environmental degradation was deemed violative of Article 21. Additionally, principles like the 'Polluter Pays Principle', 'Precautionary Principle', and 'Public Trust Doctrine' have been incorporated into environmental jurisprudence to uphold environmental rights. This interconnectedness extends beyond legal frameworks to societal and moral obligations. The judiciary's role in expanding environmental rights under Article 21 underscores the imperative for collective action in environmental conservation. Despite judicial interventions, challenges persist, highlighting the need for a holistic approach involving government, society, and individuals to ensure a sustainable and healthy environment.*

¹ Constitution of India 1950, art 21

² *Rural Litigation and Entitlement Kendra v State of U.P* AIR 1985 SC 652

³ *M.C. Mehta v Union of India* AIR 1987 SC 1086

Keywords: *article 21, Indian constitution, environmental protection, fundamental rights, judicial activism.*

INTRODUCTION

Environmental protection is crucial for safeguarding human rights and civil liberties, particularly in the face of growing environmental degradation and climate change. Article 21 of the Indian Constitution guarantees the right to life and personal liberty, which courts have interpreted to include the right to a clean and healthy environment.

Traditionally, environmental ethics have been an integral component of Indian religious principles and philosophy. Conservation of forests and the environment has always been part of Dharma⁴.

Worship of nature- Sun, Moon, Earth, Air and Water- was not merely a primitive man's response to the fear of the unknown, but it arose from the deep reverence shown to the forces of nature which sustained and preserved human life on earth. The basic tenet that underlies this deep reverence for nature is the belief that life is a singular, continuous and uniform phenomenon and even a small change in one part of the ecosystem is likely to reverberate throughout. Guru Nanak (Founder of the Sikh religion, 1469- 1539), said "*Pawan Guru, Pani Pita Mata Dhart Mahat, Divis raat Doi Daia, Khele Sagal Jagat*" (Air is like God, Water is father and Earth is the mother. It is through the harmonious interaction of all these three vital ingredients that the whole universe is being sustained⁵).

However, rapid industrialization and urbanization, combined with declining social values, have led to environmental degradation worldwide, and India has also experienced and contributed towards the same⁶. The Constitution of India is a living document that reflects the values, aspirations, and ideals of our freedom struggle. Constitutional provisions aim to ensure a clean

⁴ P. C. Joshi and Dr. Amit K Pant, '*Fighting Forest fire –An Enviro-Socio-Legal Study in Kumaon Himalaya*' (2007) 12(1) MDU Law Journal 165-179

⁵ Jaspal Singh, '*Legislative and Judicial Control of Environmental Pollution in India: An appraisal*' (2009) 27 Law Journal Guru Nanak Dev University Amritsar 37-54

⁶ Manoj Kumar Sharma, '*Judicial Control of Environmental Pollution in India*' (2009-10) 2(2) Chotanagpur Law Journal

environment, a principle reflected in the constitution itself and elucidated by the higher judiciary through interpretation.

CONSTITUTIONAL RECOGNITION OF ENVIRONMENTAL PROTECTION IN INDIA

Growing industrialization and modernization, together with a decline in moral attitudes, have all led to environmental deterioration across the world, including in India. This raises a serious concern regarding the existence of the human species as a whole, regardless of their nationality and thus it is high time that we take proactive measures towards sustainable living. When one talks about rights, it also becomes important that we talk about an individual's duties. Since both rights and duties are two sides of the same coin, if one individual is in the position to exercise the right to a safe and clean environment, it becomes important that they exercise their fundamental duty to take care of that environment and live together in harmony. Our ecosystem's habitats are closely intertwined. To safeguard our ecosystem, people have to abide by certain norms and regulate their day-to-day activities. After all, the environment sustains us and meets our most fundamental requirements for life⁷.

The Constitution of India, as the supreme law of the nation, establishes various rights, duties, and principles that every individual must adhere to. The Constitution is not only an attorney's instrument, it is an instrument of Existence, and its essence remains the spirit of the century as per B. R. Ambedkar. The majority of constitutional provisions encompass a set of fundamental or inherent rights that apply to all individuals. These are intended to limit the authority that the government holds over its citizens and its responsibility to safeguard their integrity as persons. These are typically fundamental rights that are necessary for a society. Part III of the Indian Constitution delineates the fundamental rights that citizens of the nation can exercise. While certain rights are available to all individuals regardless of nationality, these encompass the basic right to life, personal liberty and equality before the law⁸.

⁷ Mahi Pandit, 'Constitutional recognition of Environmental protection in India' (2023) SSRN <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4506392> accessed 13 March 2024

⁸ *Ibid*

RIGHT TO LIFE AND ENVIRONMENTAL PROTECTION

Article 21⁹ provides for the fundamental right to life. It is as follows: 'Protection of life and Personal liberty'- No person shall be deprived of life or personal liberty except according to procedure established by law¹⁰.

The words 'except in accordance with procedure established by law' can be interpreted to mean that this provision is subject to exception and is regulated by law which varies from case to case.

Out of all fundamental rights, Article 21 deals with the protection of life and personal liberty which is most important about the protection from environmental pollution. The concepts 'personal liberty', 'the right to life, and 'procedure established by law' are contained in Article 21 of the Constitution of India.

Our legal system acknowledges that the right to a clean environment is indeed a very old concept recognized by the judiciary. That is a basic right as well. There have been various legal rulings in support of this right. The Indian Constitution's Preamble¹¹ begins with 'We the people' and lays forth its purposes and objectives that it seeks to achieve. A Sovereign, Socialist, Secular, Democratic, Republic is proclaimed for our nation¹². It has been declared to be a key to opening the minds of Constitution makers¹³. Though the words 'Secular and Socialist' were added later on to the Constitution by the 42nd Amendment, the Constitution had a secular as well as Socialist fabric right from its inception.

Word Socialist in the Indian Constitution read in conjunction with part IV of the Indian Constitution points out that the Constitution adopted a welfare government on socialistic patterns whose prime aim was the welfare of people. Social welfare is not possible if the people are forced to live in an unclean environment which jeopardizes their health and lives. The use of the words, 'The Democratic Republic, further brings the point home that the government is to work for the welfare of the masses and that the people have the right to government process

⁹ Constitution of India 1950, art 21

¹⁰ *Ibid*

¹¹ The Preamble of the Constitution of India

¹² Pandit (n 7)

¹³ *In Re Berubari Union Case* AIR 1960 SC 845

participation shall seek to provide, apart from other things, a clean environment suitable for human abode.¹⁴

ENVIRONMENT AND FUNDAMENTAL RIGHTS

According to the Stockholm Declaration 1972, every person has a fundamental right to an environment of quality that permits a life of dignity and well-being and has a solemn responsibility to protect and improve the environment for present and future generations.¹⁵

It has been recognized that a clean environment is a basic need for the survival of humanity and it cannot be ensured without ecological balance, thus, this right belongs to all, as the survival of mankind depends on a clean, healthful or pollution-free environment¹⁶. Therefore, the declaration is directly related to the right to life and personal liberty, equality, freedom of expression and right to trade and commerce guaranteed under the Constitution of India. Any act of polluting the environment will be pervasive and violative of fundamental rights conferred under Part III of the Constitution.¹⁷

Since the provision begins with the word 'no' that is the reason it has been given a negative impact. But post-Maneka¹⁸ period, this provision has been given a positive interpretation and positively casts a duty on the state to enforce the due implementation of this law. Right to life includes the right to have a dignified life and also the bare necessities of life like food, shelter, clean water and clothes. The right to live extends to having a decent and clean environment in which individuals can live safely without any threat to their lives. An environment shall be free from diseases and all sorts of infections.

This is crucial because the right to life can be fulfilled only when one lives in a clean, safe and disease-free environment, otherwise granting such a right would prove to be meaningless. This aspect of Article 21 has been discussed in the case of Rural Litigation and Entitlement Kendra

¹⁴ Manoj Kumar Sharma, 'Constitutional Provisions relating to environment protection in India: Environmental law and policies' Paper 13

¹⁵ Stockholm Declaration 1972, principle I

¹⁶ S.C. Shastri, *Environmental Law* (6th edn, EBC 2018) 58

¹⁷ Dr. Vinay N. Paranjape, *Environmental Law* (3rd edn, CLA 2021)

¹⁸ *Maneka Gandhi v Union of India* AIR 1978 SC 597

Dehradun v State of Uttar Pradesh¹⁹, where the petitioner along with the other citizens wrote to the Supreme Court expressing their views against the progressive mining which denuded the Mussoorie Hills of trees and forests and soil erosion. This led to hurting the environment and resulted in landslides along with blockage of underground water channels.

The state has to provide at least minimum conditions ensuring persons live with human dignity, which means that the right to life cannot be interpreted and restricted to mere animal existence, but much more than just physical survival. It includes the right to live with human dignity and the same was discussed in this case for the very first time, which is also known as the Doon Valley Case.

The Court, in this case, observed, 'This is the first case of its kind in the country involving issues relating to the environment and ecological balance and the questions arising for consideration are of grave moment and significance not only to the people residing in the Mussoorie Hill range but also in their implications to the welfare of the generality of people living in the country.' Though in this case, the Supreme Court did not specifically refer to Articles 48A and 51(1) (g) which directly relate to the protection of the environment, nor did it articulate that a specific fundamental right was infringed, the court's whole thrust was that quarrying operations in the valley were detrimental to the environment and ecology which were bound to adversely affect the life of persons living there, and hence violative of Article 21.

In a subsequent case, namely, M.C. Mehta v Union of India²⁰, which is also known as the Oleum Gas Leakage Case, the Supreme Court reiterated that the right to live in a pollution-free environment is a part of the fundamental right to life under Article 21 of the Constitution. In this case, stone-crushing activities in and around Delhi were causing a huge problem of pollution in the environment. The court was conscious of the inevitable consequences and the ecological problems caused due to the industrial activities in the country. In the name of environmental development, it cannot be permitted to degrade the quality of the ecology and increase different forms of pollution to the extent that it becomes a health hazard to the lives of

¹⁹ *Rural Litigation and Entitlement Kendra v State of U.P* AIR 1985 SC 652

²⁰ *M.C. Mehta v Union of India* AIR 1987 SC 1086

all citizens. It was further held that citizens have a right to fresh air and a pollution-free environment in which they live.

RIGHT TO LIFE (ARTICLE 21) IS THE RIGHT TO A WHOLESOME ENVIRONMENT

Personal Liberty: According to *Dicey*²¹, ‘Personal Liberty’ means a personal right not to be subjected to imprisonment, arrest or other physical coercion in any manner that does not admit of legal justification.

In *A.K. Gopalan v Union of India*²², ‘Personal Liberty’ was said to mean only liberty relating to, or concerning the person or body of the individual and in this sense, it was anti-thesis or physical restraint or coercion.

Similarly, in *Khorak Singh v State of U.P.*²³, the Supreme Court held that the term is used in Article 21 as a compendious term to include within itself all the varieties of rights that go to make up the ‘personal liberties’ of other than those dealt with in several clauses of Article 19(1).

Whereas, in *Maneka Gandhi v Union of India*²⁴, Bhagwati J. observed, ‘The expression ‘personal liberty’ in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have raised to the status of distinct fundamental rights and gave additional protection under Article 19.’

Right to Life: The word ‘Life’ in Article 21 means a life of dignity as a civilized human being and not just animal survival. The right to life embraces not only physical existence but the quality of life as understood in its richness and fullness by the ambit of the constitution.

In *Bandhu Mukti Morcha v Union of India*²⁵, The Supreme Court ruled that the right to live with human dignity, as enshrined in Article 21 of the Constitution, must encompass the protection of the health and strength of workers, both men and women, as well as the tender age of children against abuse. It should also ensure opportunities and facilities for children to develop healthily

²¹ Dr. S.R. Myneni, *Environmental Law* (1st edn, Asia Law House 2013)

²² *A.K. Gopalan v Union of India* AIR 1950 SC 27

²³ *Khorak Singh v State of UP* AIR 1963 SC 1295

²⁴ *Maneka Gandhi v Union of India* AIR 1978 SC 597

²⁵ *Bandhu Mukti Morcha v Union of India* AIR 1984 SC 802

and conditions of freedom and dignity, access to educational facilities, fair and humane working conditions, and maternity relief. These are the essential requirements that must be present to enable a person to live with human dignity.

Procedure Established by Law: Law means state-made law and it does not mean the rules of natural justice, i.e., the principles of '*Audi Alteram Partem*', '*Nemo Judex in Causa Sua*', and '*No bias*'.

In *M.S.M Sharma v S. K. Singh*²⁶, the court held, that the procedure established by statute enacted by either the Union or the State Legislature. In legal proceedings, due process of law refers to the law being applied through the regular administration of justice in courts, by the fundamental principles of a free government. It entails a course of action following established rules and principles that are designed for the protection and enforcement of private rights²⁷.

In *Maneka Gandhi v Union of India*²⁸, the Supreme Court interpreted the expression 'procedure established by law in Article 21 would no longer mean that law could prescribe some semblance of procedure, however arbitrary and fanciful to deprive a person of his liberty. The procedure must be just, fair and reasonable and the court has the power to judge the fairness and justness of the procedure established by law to deprive a person of his liberty.

RIGHT TO GET POLLUTION-FREE WATER AND AIR

Without clean water, we cannot survive for even half a week, and without air, we cannot last even half an hour. Access to pollution-free water and air is crucial for maintaining a healthy mind and body. The case of *Subhash Kumar v State of Bihar*²⁹ emphasized this right as a part of Article 21. In this instance, a Public Interest Litigation (PIL) was filed against two iron and steel companies, accusing them of polluting the nearby river Bokaro by disposing of waste into it. The petitioner criticized the State Pollution Control Board for failing to prevent this pollution and volunteered to collect the waste and sludge themselves. The Court affirmed that the

²⁶ *MSM Sharma v SK Singh* AIR 1959 SC 395

²⁷ Dr. S.C. Tripathi, *Environmental Law* (Central Law Publication 2019)

²⁸ *Maneka Gandhi v Union of India* AIR 1978 SC 597

²⁹ *Subhash Kumar v State of Bihar* AIR 1991 SC 420

Fundamental Right to Life encompasses the right to access pollution-free water and air. If anything jeopardizes the quality of water and air, a citizen can file a petition.

In several instances, the Supreme Court of India has issued directives to the Central Government and relevant authorities to undertake measures for environmental protection. The court has even declared that under Article 21 of the Constitution of India, every citizen has the right to a healthy, pollution-free environment and personal liberty³⁰.

To illustrate this point, the Supreme Court in *Hinch Lal Tiwari v Kamla Devi*³¹, The court pronounced that the material resources of a community, such as forests, tanks, ponds, hillocks, mountains, etc., are gifts of nature, as they uphold a delicate ecological equilibrium. They must be safeguarded for a suitable and healthy environment that allows people to relish a quality of life, which is the crux of the guaranteed right under Article 21 of the Constitution. The court ruled that the land of the pond could not be allocated for residential purposes.

Thus, the government and its agencies are under the constitutional obligation to protect and enhance the natural environment when the constitution itself outlines the concept and objective for the protection and improvement of the natural environment, an Act aimed at providing for such protection and improvement, along with related matters, cannot be deemed unconstitutional in any manner.

JUDICIAL APPROACH

The Indian Judiciary has been responsive to environmental concerns and has adopted a pragmatic and proactive approach to interpreting constitutional provisions related to environmental protection. The judiciary's pragmatic and realistic stance has allowed it to interpret the right to live in a clean environment as inherent in the right to life and personal liberty guaranteed by Article 21.

One of the most noteworthy aspects of this broadening of Article 21 is that many of the non-justiciable Directive Principles outlined in Part IV of the Constitution have now been

³⁰ Dr. Paramjit S. Jaswal et al., *Environmental Law* (Allahabad Agency 2011)

³¹ *Hinch Lal Tiwari v Kamla Devi* AIR 2001 SC 3215

transformed into enforceable fundamental rights through judicial activism, primarily utilizing Article 21, which was somewhat underutilized during the Gopalan era.

Pollution is a consequence of modern industrialization and urbanization. While the wealthy and educated often voice concerns about pollution, they sometimes contribute to it themselves. On the other hand, the poor and residents of slums often remain silent about it. Industrial effluents discharged into water bodies, stagnant pools of contaminated water in streets, inadequate sewage systems, etc., contribute to a grim scenario of water pollution. The air is filled with smoke and smog from polluting vehicles, industries, and agricultural burning, resulting in significant air pollution that adversely affects the health of millions of people.

Although the legislature has enacted various laws to combat and control environmental pollution, they have often fallen short of achieving significant results. Given the plight of the Indian masses, the Supreme Court has intervened and interpreted the right to be protected from environmental pollution as an integral aspect of the right to life enshrined in Article 21, aiming to alleviate the suffering and oppression caused by escalating environmental pollution.

In *B.L. Wadhwa v Union of India*³², it was held that pollution-free water and air is a fundamental right under Article 21 of the constitution.

In *Vellore Citizens Welfare Forum v Union of India*³³, the petition was filed against the pollution caused by the significant discharge of untreated effluents by tanneries and other industries in the State of Tamil Nadu. It was argued that the untreated effluents discharged by tanneries in Tamil Nadu have contaminated the primary water supply sources as well as groundwater. The Court deliberated on the Precautionary Principle and concluded that the right to be protected from environmental pollution is inherent in the right to life enshrined in Article 21 of the Constitution.

In *M.C. Mehta v Kamal Nath*³⁴, It was argued that if a petitioner is disturbed due to someone disrupting the ecological balance and tampering with the natural conditions of rivers, forests,

³² *B.L. Wadhwa v Union of India* AIR 1996 SC 2969

³³ *Vellore Citizens Welfare Forum v Union of India* AIR 1996 SC 2715

³⁴ *M.C. Mehta v Kamal Nath* AIR 2000 SC 1997

air, and water, which are gifts of nature, it would constitute a violation of the fundamental right guaranteed under Article 21 of the Constitution. The Court, after determining it to be a violation of Article 21, further observed that in such cases, the Polluter Pays Principle and the Principle of Public Trust Doctrine apply.

Thus, the courts have unequivocally established that the right to live in an unpolluted environment is a fundamental right implicit in the right to life and personal liberty enshrined in Article 21. Moreover, the Judiciary has also issued guidelines in certain cases to prevent and rectify the disruption of ecological balance, including directives to shut down certain industrial establishments.

INTERNATIONAL ENVIRONMENTAL AGREEMENTS

India has served as a signatory to a myriad of international accords about environmental conservation. The entire world has one environment, as said at the Stockholm Conference in 1972³⁵. India is obligated to interpret these provisions and implement them in the Nation as a signatory to such multinational treaties. This is expressly mentioned in Article 51 (c)³⁶ of the Constitution, which stipulates that the state will promote adherence to treaty commitments and international norms.

In *Narmada Bachao Andolan v Union of India*³⁷, it was established that only when we deliberate upon the effects of the establishment of a particular industry and project, we can understand its implications and initiate suitable sustainable measures to preserve ecological balance. Mere changes may not necessarily lead to ecological disasters. Proactive measures taken to preserve the environment would certainly have sustainable implications.

CONCLUSION

The Constitution of India is a living document, and the Indian Judiciary has, through interpretative means, recognized various unenumerated rights as fundamental rights. The

³⁵ The Stockholm Declaration 1972

³⁶ Constitution of India, 1950

³⁷ *Narmada Bachao Andolan v Union of India* (2000) 10 SCC 664

Judiciary has not only acknowledged the right to a clean environment as a fundamental right but has also developed environmental jurisprudence that encompasses important principles such as the Polluter Pays Principle, Precautionary Principle, Public Trust Doctrine, and others. However, despite the active role played by the Judiciary, environmental pollution continues to escalate. Furthermore, no right can be fully protected and guaranteed unless the entire community recognizes their moral, ethical, social, and constitutional duties and commits to fulfilling them.

The Jurisprudence surrounding environmental rights under Article 21 reflects recognition of the interconnectedness between environmental protection and fundamental rights. It underscores the imperative for the state and society to prioritize environmental conservation as an internal component of ensuring a dignified and healthy life for all citizens.

RECOMMENDATIONS

To further strengthen the discourse on environmental rights under Article 21 of the Indian Constitution and bolster environmental protection jurisprudence, several recommendations can be considered. Firstly, legislative reforms should be prioritized to ensure that existing environmental laws are comprehensive, up-to-date, and effectively address emerging environmental challenges. Additionally, introducing new legislation where necessary can help bridge gaps in environmental regulation. Strengthening enforcement mechanisms is crucial to ensure strict compliance with environmental laws and regulations. This could involve increasing penalties for non-compliance and establishing specialized environmental courts for expedited resolution of disputes. Public awareness and education campaigns should be implemented to educate citizens about their rights to a clean and healthy environment under Article 21, fostering environmental literacy and empowering communities to actively participate in conservation efforts. Community engagement is essential, encouraging collaboration between government agencies, civil society organizations, and local communities in environmental decision-making processes. Capacity-building programs should be initiated to enhance understanding of environmental laws and principles among government officials, legal professionals, and law enforcement agencies. Integrating environmental concerns into all sectors and policies, and promoting sustainable development approaches that balance

environmental protection with socioeconomic goals, is imperative. Furthermore, research and innovation in environmental science, technology, and policy should be supported to develop innovative solutions for environmental challenges. Strengthening international cooperation on transboundary environmental issues, promoting corporate responsibility for environmental impact, and ensuring access to legal aid and justice for marginalized communities are also essential measures. By implementing these recommendations, India can advance its commitment to environmental protection and uphold the constitutional right to a clean and healthy environment, contributing to the well-being of present and future generations.