



# Jus Corpus Law Journal

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

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## Right to Health under the Indian Constitution: Critical Essay on Ban of Endosulfan Fertilizer

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*Received* 28 August 2024; *Accepted* 30 September 2024; *Published* 03 October 2024

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*“The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition”.*

- Dr. Tedros Adhanom Ghebreyesus

*The Endosulfan disaster in Kasargod, Kerala, exemplifies one of India's most tragic violations of the Right to Health, highlighting the consequences of environmental injustice. Endosulfan, a highly toxic pesticide, was aerially sprayed over cashew plantations for more than two decades, causing severe health problems among the local population. This critical research essay widely explores the right to health as prescribed under the Constitution of India in light of the ban on endosulfan fertiliser. It underscores how the negligence of authorities deprived a minority population of their basic health rights. Furthermore, the essay navigates through the concept and evolution of the right to health, relevant laws and precedents reiterating the right, the critical analysis of the judgment on the ban of endosulfan fertiliser, and similar case studies. To sum up, the paper discusses the effectiveness of legal interventions, the shortcomings in relief efforts, and the broader implications of environmental justice. Suggestions for improving accountability, ensuring continuous health monitoring, and accelerating judicial processes are offered to prevent similar disasters in the future.*

**Keywords:** *health, constitution, fertiliser, disaster.*

## INTRODUCTION

Health is an integral aspect of human well-being. It broadly includes the physical, mental, emotional, and social state of a person that are essential to survival. Health, as described by the World Health Organization, is not just the absence of any disease but the complete well-being which enables an individual to actively participate in society.<sup>1</sup> In pursuance of this, the Right to Health is an essential component of the Indian Constitution, included under Article 21<sup>2</sup> and is also stated in the Directive Principles of State Policy.

## BACKGROUND

Endosulfan is a highly poisonous pesticide that is used globally. It has been used extensively in agricultural fields to control insects and pests. It became highly controversial due to its toxic nature, which caused threats to human health. As a result of this, the global ban was initiated under the Stockholm Conference in April 2011.

The endosulfan tragedy that occurred in the **Kasargod District of Kerala** is considered one of the worst pesticide disasters that affected the health and well-being of the people living in that region. The endosulfan pesticide was aerielly sprayed in the cashew plantations over around 20 years without even analysing the impact that it left on the thickly populated area. Local health officers had documented the ill-health effects of breathing endosulfan to cause genital anomalies, delay in attaining puberty, mental retardation, abortions, and stages of cancer.<sup>3</sup> This aerial spraying of endosulfan pesticide began in the year 1978. This was done around 3 times every year to prevent the pesticides. The aerial spraying covered a large area of land, including 15 Gram Panchayats in the district of Kasargod. Even though there were few signs of toxicity in the beginning, such as birds and bees dying massively, the issue's seriousness was not considered. Later, the journey of a local medical practitioner to find out the reason behind the increased mental illness and abnormalities of the people resulted in the findings of endosulfan's toxic reactions to human health.

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<sup>1</sup> World Health Organization

<sup>2</sup> Constitution of India 1950, art 21

<sup>3</sup> Dr. Adithya P., *India's Endosulfan Disaster - A review of the Health impacts and status of remediation* (2009)

## ENDOSULFAN DISASTER: CONCEPT AND THEORY

The endosulfan was sprayed aurally over the 15 Gram panchayats of Kasargod district, especially in the **Padre village** over the cashew plantations. This was started in the year 1978. Apart from the cashew plantations, it was extensively used in other agricultural fields as well. A few years later, there were reports of cattle and calves being born with inherent deformities. The creatures such as fish, honeybees, fireflies, and animals like jackals completely disappeared from the place. The children started suffering from various chronic disorders. However, the cause for it was found later after many years.

Why the endosulfan tragedy is considered a major violation of the Right to Health is a debatable question. The background of the case study revolves around two aspects: Health deprivation of the minority group of people causing environmental injustice and negligence by authorities in taking necessary steps.

**Health Deprivation of Minority Groups of People:** In India, the environmental challenges are very diverse. Right from deficiency of necessities like clean water and proper sanitation, the list continues. There are various policies, such as The National Clean Air Programme (NCAP), which was launched in 2019, and acts by the Government, including Air and water pollution prevention and control, environmental protection, and many more. However, these policies often tend to ignore the health of minority populations, which ultimately results in the degradation of public health.<sup>4</sup> Over the period, the researchers on environmental health firmly established a connection between environmental justice and injustices. The poor and a small group or community are often the victims of such inequities in health outcomes.

People living in hazardous environmental conditions are more prone to chronic diseases. When this hazardous environment is created by the negligence of the authorities, the benefits shall be enjoyed by the larger population at the cost of the health of a minority group of people living in that area. This is environmental injustice. Despite medical practitioners bringing the issue to

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<sup>4</sup> Nitish Gogoi and S. S. Sumesh, 'Environmental Injustice and Public Health in India: Towards a "Decolonial Intersectional Environmental Justice" Framework' (2023) 58(30) Economic & Political Weekly <<https://www.epw.in/engage/article/environmental-injustice-and-public-health-india>> accessed 07 August 2024

light, the same was neglected by the authorities. This neglect led to the aggravation of the issue and numerous health complexities of the people.

## LAWS AND ETHICS

Complete physical and social well-being can be ensured only by promising all the necessities required for life, which include clean air, non-contaminated water, clean surroundings, proper sanitation, etc.

'Right to Health' is not explicitly mentioned under the Indian Constitution. However, through multiple interpretations of the provisions, it was observed that the Right to health is included in the Right to Life, as prescribed in **Article 21** of the Indian Constitution.<sup>5</sup> Unfolding the provisions of part III of the Indian Constitution, the following inferences can be drawn:

Firstly, **Article 14** of the Constitution speaks about equality. All citizens of India are equal before law and equal protection shall be provided to all of them within the Indian territory. Depriving the health conditions of some people for the benefit of a larger good is a gross violation of **Article 14**.

Secondly, **Article 15**<sup>6</sup> of the Constitution elaborately explains the equality of treatment. No person should be discriminated against based on religion, sex, place of birth, etc. Considering this, people who were born in the Padre village of Kasargod District were involuntarily made subject to health hazards due to their place of birth. The toxicity of the fertiliser was such that even the unborn children were affected due to that, which resulted in several deformities when they were born.

Thirdly, **Article 21**<sup>7</sup>, the heart and soul of the Indian Constitution, promises the right to life for all the people. This underlines all the important aspects that are necessary for the sustainment of life. The Supreme Court, while interpreting **Article 21**, ruled that the expression 'life' does not

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<sup>5</sup> Constitution of India 1950, art 21

<sup>6</sup> Constitution of India 1950, art 15

<sup>7</sup> Constitution of India 1950, art 21

connote mere animal existence, but it inter alia means the opportunities to eliminate disabilities and sickness.<sup>8</sup>

In **Sunil Batra v Delhi Administration**, the SC reiterated that the right to life included the right to lead a healthy lifestyle and enjoy the human body at its prime condition.<sup>9</sup>

The apex Court held in the 1984 case that the right to life includes living with necessities of life, which include sufficient nutrition, clean air and water, shelter, etc.<sup>10</sup> Another broad formulation of the right to health has been prescribed in the **Bandhua Mukti case**, wherein the court said the health of men and women and of children who are of tender age shall not be against the facilities or opportunities for them to develop healthily.<sup>11</sup>

The **Vincent Case** held in the Supreme Court emphasised that only a healthy body and mind can do all human activities. Therefore, health is an important aspect. Depriving the necessities is a violation of the Right to Health.<sup>12</sup> The State should lay stress on improving public health. In case of a disaster that has happened, it is the State's responsibility to give proper medical care and ensure the health of the public. In **Paramanand Katara v Union of India**,<sup>13</sup> the SC clarified that the preservation of human health is to be given paramount importance.

Fourthly, under the **Directive Principles of State Policy, Article 47**<sup>14</sup> imposes the duty on the State to raise and control the level of nutrition and living standards to improve the health of the public. **Article 48A**<sup>15</sup> ensures that the State shall protect the citizens from pollution and ensure a clean and safe environment for good health. The Supreme Court in **Paschim Banga Khet Mazdoor Samity v State of West Bengal**<sup>16</sup> contended that it is the government's responsibility

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<sup>8</sup> *Kharak Singh v State of Uttar Pradesh* AIR 1963 SC 1295

<sup>9</sup> *Sunil Batra v Delhi Administration* AIR 1978 SC 1675

<sup>10</sup> *Francis Coralie v Union Territory of Delhi* (1981) SCR (2) 516

<sup>11</sup> *Bandhua Mukti Morcha v Union of India* (1984) SCR (2) 67

<sup>12</sup> *Vincent v Union of India* (1987) SCR (2) 468

<sup>13</sup> *Paramanand Katara v Union of India* (1989) AIR 2039

<sup>14</sup> Constitution of India 1950, art 47

<sup>15</sup> Constitution of India 1950, art 48A

<sup>16</sup> *Paschim Banga Khet Mazdoor Samity v State of West Bengal* (1996) 4 SCC 37

to ensure the welfare of the people. Ensuring good health is an aspect of welfare. The same contentions were also reiterated in the **Unnikrishnan v State of Andhra Pradesh**.<sup>17</sup>

## CRITICAL ANALYSIS

Health is undoubtedly an important aspect of the human life. The factors affecting human health are pure air, uncontaminated water, a clean and safe environment, proper sanitation, etc. Access to these necessities is a matter of right, as discussed before. Therefore, it can rightly be concluded that depriving of these necessities is a violation of the right to health. Similar incidents have taken place, wherein the public was deprived of necessities like water and air, thus causing ill effects on health. Critical analysis of the ban on endosulfan can be analysed in two aspects:

- Primarily, similar case studies of right to health violation by depriving the necessities and how the same was handled and
- Secondly, the effectiveness of the relief and remediation program.

In the village of **Plachimada** in the Palakkad District of Kerala, a Coca-Cola factory was established. The factory outlet required huge gallons of water. Soon after the factory outlet was opened, the wells and water bodies in the place started to become dry. The water left in the sources became contaminated.<sup>18</sup> This caused severe health effects to the people living in that village. The days-long strike to restore the necessities and ensure the health of people resulted in Government intervention. The factory was shut down in 2004. However, the compensation is yet to be paid. The health effects of the activities then carried out by the multinational company, to this day, affect the local people.

By carefully perusing these case studies, it can be understood that deprivation of health need not necessarily happen due to any disease, whether mental or physical, but also by scenarios wherein a sect or group of people are voluntarily made to suffer ill health for the benefit of a larger group.

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<sup>17</sup> *Unnikrishnan v State of Andhra Pradesh* (1993) SCR (1) 594

<sup>18</sup> Savarin Sitisarn, 'Political Ecology of the soft drink and bottled water business in India; a case study of Plachimada' (Master's Theses, Lund University 2012)

Critically analysing the judgment of endosulfan, it can be seen that the Government of Kerala banned the use of endosulfan fertiliser in 2005. However, due to the lack of strictness and authority, the use of endosulfan was continued in various villages for increased agricultural yield, not taking into consideration the health of the people living there.

In 2011, the **7<sup>th</sup> meeting of the Stockholm Convention** declared a global ban on the use of endosulfan fertiliser.

As a remedy for the violation of the right to health, the SC directed the Government of Kerala to pay rupees 500 crores to the victims of the tragedy. The court also directed to set up a group of medical practitioners in each panchayat to treat the ailments so caused by the effect of endosulfan. This relief and remediation program mainly focuses on health, welfare and most importantly, the rehabilitation of the victims of health hazards.

However, the disadvantage is that the legal proceedings get prolonged easily. The compensation was directed to be paid in 3 months; however, it did not happen. The victims fought again for 5 years to get the payment. The Court intervened and contended that by the delay of 5 years, many more victims would have died because of the ill effects.

## CONCLUSION

The Endosulfan disaster in Kasargod, Kerala, stands as a tragic example of environmental injustice and a significant violation of the Right to Health, as outlined by the Indian Constitution. Despite early warnings of Endosulfan's toxic effects on the environment and human health, negligence was the reason for its spreading. The Right to Health, though not explicitly stated in the Constitution, is deeply intertwined with Article 21<sup>19</sup>, Article 14,<sup>20</sup> and Article 15<sup>21</sup>. Ensuring the health of all citizens is not just a legal obligation but a moral one, demanding both preventive and remedial action from the state.

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<sup>19</sup> Constitution of India 1950, art 21

<sup>20</sup> Constitution of India 1950, art 14

<sup>21</sup> Constitution of India 1950, art 15

From the discussion, it is evident that the Right to life under the Indian Constitution includes the right to health, and therefore, the State must provide the necessities to the public. The constitution also stipulates that citizens should contribute to the promotion of health in the country.