

# PAINTING THE CANVAS OF 'RIGHT TO LIFE' WITH HUES OF 'RIGHT TO ENVIRONMENT' IN INDIA- AN ANALYSIS

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## ABSTRACT

There are no better words to begin with than taking the privilege of quoting Hon'ble Justice Field's observation in **Munn vs Illinois**<sup>i</sup> case which the Hon'ble Supreme Court of India cites in its infamous, **Kharak Singh v/s State of U.P. & Ors.**<sup>ii</sup> as the implication of "life":

*"By the term "life" as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all these limits and faculties by which life is enjoyed..."*

Article 21<sup>iii</sup> has never been manacled in its letter; it has never been set in stone; it has attained varied and colourful interpretations throughout both time and generations. Judicial creativity has given birth to an echoing interpretation in the form of "Right to Environment" under Article 21<sup>iv</sup> holding a special place for it serves the changing needs and circumstances of society.

I devote my article to paint the canvas of "Right to life" with hues of "Right to Environment in India" and hence the name; an analysis using catalyst of precedents on the matter in hand.

**Keywords:** Life, Environment, Fundamental Rights, Directive Principles of State Policy, Human Rights.

## INTRODUCTION

Montesquieu<sup>v</sup> demarcated the arena of operation of the legislature, executive and judiciary as law- making agency, law- enforcing agency and, guardian and interpreter of law respectively. His doctrine of separation of powers was welcomed both with ‘open arms’ and ‘fists’; he anticipated neither the kind of role that the judiciary will assume in different nations across the globe nor the might of the Indian judiciary as it stands today. The legislature vested with the law- making authority cannot be expected to not commit errors and/or omissions, hiatuses are bound to occur and these are filled in by the hon’ble judiciary.

The right to a clean environment is an all-encompassing right necessary for the realization of other rights because the environment contains all life.<sup>vi</sup> Any harm to the environment significantly affects its beneficiaries— including humans.<sup>vii</sup> The expansive interpretation of ‘life’ in Article 21 of the Indian Constitution which reads as-

*“21. Protection of life and personal liberty- No person shall be deprived of his life or personal liberty except according to procedure established by law.”*

has led to the salutary development of environmental jurisprudence in India<sup>viii</sup>, also known as green jurisprudence which is an outcome of our proactive Supreme Court.<sup>ix</sup>

## PRELUDE THROUGH ALLIANCE OF ENVIRONMENT, DEVELOPMENT & HUMAN RIGHTS: GLOBAL PERSPECTIVE

The 1972 Stockholm Conference which provided the first platform where issues concerning the link between the environment and economic development were discussed, drew a wide range of participants from both developing and developed nations of the world.<sup>x</sup> The Conference laid the foundation for the emergence of the concept of sustainable development as a satisfactory resolution to the environment versus development dilemma. Consequences of the Conference include the establishment of the United Nations Environment Programme (UNEP), several other national environmental protection agencies and international meetings that culminated in environmental friendly resolutions and instruments.

Moreover, it was the 1983 World Commission on Environment and Development (WCED) that popularized the term ‘sustainable development’.<sup>xi</sup> The Brundtland Commission's report,

‘Our Common Future’, weaved social, environmental and economic issues and provided direction for comprehensive global solutions.<sup>xii</sup>

The Hague Declaration on the Environment adopted in 1989 also recognizes the link between human rights and the environment and explicitly endorses the right to live with dignity in a viable environment.<sup>xiii</sup> Its preamble provides:

*“The right to live is the right from which all other rights stem. Guaranteeing this right is the paramount duty of those in charge of all States throughout the world. Today, the very conditions of life on our planet are threatened by the severe attacks to which the earth’s atmosphere is subjected.”<sup>xiv</sup>*

Other global meetings to expound on the concept of sustainable development were held in Rio de Janeiro in 1992 and Johannesburg in 2002.<sup>xv</sup> Rio took stock of developments since the Stockholm Conference and reiterated the relationship between the environment and sustainable development while emphasizing that environmental protection should constitute an integral part of the development process. Important in this regard is Principle 10 of the Rio Declaration that formulated the link between human rights and environmental protection largely in procedural terms.<sup>xvi</sup> It states:

*“Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”<sup>xvii</sup>*

An important development is the convergence of the environmental movement with the human rights movement at the national level, particularly in developing countries.<sup>xviii</sup> Many environmental problems give rise to human rights violations. An intimate relationship exists between human rights, environmental protection and economic development. Environmental problems can give rise to human rights abuse; economic development can, and often does, give rise to environmental problems; and human rights abuse and human rights violations can take place because of environmental issues.<sup>xix</sup>

On 12 December 2015, parties to the UNFCCC reached a landmark agreement to combat climate change and to accelerate and intensify the actions and investments needed for a sustainable low carbon future.<sup>xx</sup> The Paris Agreement builds upon the Convention and – for the first time – brings all nations into a common cause to undertake ambitious efforts to combat climate change and adapt to its effects, with enhanced support to assist developing countries to do so; its central aim is to strengthen the global response to the threat of climate change by keeping a global temperature rise this century well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1.5 degrees Celsius.<sup>xxi</sup> As such, it charts a new course in the global climate effort. Paris Agreement is not a human rights treaty in the usual sense, it does help to mainstream human rights norms into the ongoing implementation and evolution of the climate regime.<sup>xxii</sup>

In addition to the above, the first generation rights(civil and political rights) and second generation rights (economic, social and cultural rights) are shielded vide means of ICCPR(International Covenant on Civil and Political Rights) and ICESCR(International Covenant on Economic, Social and Cultural Rights). Right to environment is effective on all other rights and hence, the aforementioned covenants become crucial.

## **“RIGHT TO ENVIRONMENT” THROUGH “RIGHT TO LIFE” IN INDIA: A MAGNIFIED LENS**

In India, a state of natural imbalance has been developed by many human-centric activities such as the industrialization, urbanization and the large scale exploitation of natural resources damaging the environment led to many serious repercussions on a large scale including Global Warming, drought, flood, environmental Refugees and migration, health issue, Ozone Depletion, etc.<sup>xxiii</sup>

India is a Welfare State aiming at achieving and realizing the goals that it has set for itself in its grund norm, i.e., The Constitution of India, 1950. However, the reality and the aspirations are placed at two diametrically opposite ends. The question thus arises- How are we supposed

to meet the distance of expectations and reality? The Directive Principles of State Policy (DPSPs) enshrined in Part IV<sup>xxiv</sup> are certain policy guidelines that aim in bridging the gap between two worlds and trying to integrate them as one. Article 48 -A of the Constitution<sup>xxv</sup> says that the state shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. Thus, Article 48- A is explicit in its approach; however, the only impediment is that it is a policy guideline for State and not an obligation enforceable in courts of law.

Another question thus poses- How can we enforce right to environment in India? The Constitution of India under Part III guarantees Fundamental Rights which are essential for the development of every individual and to which a person is inherently entitled by virtue of being human alone.<sup>xxvi</sup> Right to environment is also a right without which development of individual and realization of his or her full potential shall not be possible. Articles 21<sup>xxvii</sup>, 14<sup>xxviii</sup> and 19<sup>xxix</sup> of this part have been used for environmental protection.

It is appropriately said, “Every right has a corresponding duty.” Picturizing rights with no duties is like having “well- maintained roads” but with potholes at different ends; thus, what and how good is such maintenance? The Constitution of India made utmost sure to provide for duties along with rights; under Part IVA, Article 51A(g)<sup>xxx</sup> provides for a Fundamental Duty “to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;”

## **THE PRECEDENT- LAW**

Most certainly, the dimensions that the right to life has assumed over years in India wouldn't have been possible in absence of judicial creativity vide means of its activism. A right becomes worthless in absence of its remedy. Thus, Articles 32(Supreme Court) and 226(High Court) of the Indian Constitution have assumed an indomitable role by providing for right to Constitutional Remedies; to make this article more flavorful, Public Interest Litigation (PIL) has gained momentum. I would now like to proceed with citing the highlights for plethora of



case laws adjudged by the Hon'ble apex court giving such "hues of environment" in the first place.

- **M.C. Mehta v/s Union of India (UOI)<sup>xxxii</sup>**- M.C. Mehta is a name on everyone's lips when it comes to Public Interest Litigation. In this particular case, he filed a PIL under Articles 21 and 32 of the Constitution and sought closure and relocation of the Shriram Caustic Chlorine and Sulphuric Acid Plant which was located in a thickly populated area of Delhi.<sup>xxxiii</sup> Profusion of things were discussed, inter alia, the interpretation of the Constitution of India ought to be creative and innovative in consonance with human rights jurisprudence was one and, private corporation being part of 'State' as 'other authorities' under Article 12 thereby making it amenable to writ jurisdiction of court was another. This judgment came in the aftermath of the Bhopal Gas Leak tragedy which revealed the dark facade of industries as being harmful to environment and thereby to human existence per se.
- **M.C. Mehta v/s Kamal Nath<sup>xxxiii</sup>**- In this case, the apex court whilst discussing the doctrine of public trust that land (rivers, forests, air, etc.) is entrusted to public at large, upheld that- the Government of Himachal Pradesh committed a patent breach of such public trust by leasing an ecologically fragile land to Span Motels Private Ltd.
- **Rural Litigation & Entitlement Kendra v/s State of U.P.<sup>xxxiv</sup>**- Writ petitions under Article 32 were filed before the Hon'ble Supreme Court of India concerning the mining of limestone quarries in Dehradun mining area which, as a consequence caused denudation of forest cover therein. The air, soil and water pollution in the area caused significant degradation of environment. After the categorization of limestone quarries, another significant issue was to secure employment to those who would be left unemployed after the shut- down of the quarries.
- **Vellore Citizens Welfare Forum v/s UOI<sup>xxxv</sup>**- Another writ petition that brought with it another glaring issue was that- in the state of Tamil Nadu, there was discharge of untreated effluents by tanneries in river Palar and degradation of soil further made the

land unfit for cultivation. Two crucial doctrines/ principles evolved as a consequence of this case and they were “precautionary principle” and “polluter- pays principle”.

- **M. C. Mehta v/s UOI<sup>xxxvi</sup>**- Famously called the “Taj Trapezium case”, the factories around the area of the magnificent Taj Mahal in Agra discharged effluents in the form of particulate matter which resulted in acid rain, thereby causing discoloration of our masterpiece. Thus, based on “polluter- pays principle” and “precautionary principle”, borders around the Taj Mahal were declared as green belt (TTZ- Taj Trapezium Zone) and specific instructions were supplied to industries and those who did not comply, were asked to shut down.
- **M.C. Mehta v/s UOI**- In this year 2020, various cases came up before the courts and are recent developments on environmental law which are firmly grounded in the precedents set over decades of environmental struggle. The highlights were- stubble burning in Delhi NCR’s adjoining parts of Punjab, Haryana and Uttar Pradesh; Delhi’s odd- even scheme; rampant construction activities, etc. all contributing to environmental degradation.

## CONCLUSION

Environmental concerns though not a recent development but their relevance will continue to hold for time immemorial. The concern for the environment is a concern for future generations. Sustainable Development is an agenda that is rooted deep down in environmental jurisprudence and yet, sometimes an eclipse is witnessed over the term “sustainable”. Environment has been a passive sufferer due to human activities. I may say it this way- the environment learnt to live actively when humans became passive due to the COVID- 19 pandemic. But, it is Article 21’s canvas that has been painted with “hues” of right to environment in India and thus, human life will sustain due to such “hues”!

## ENDNOTES

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<sup>i</sup> 94 U.S. 113 (1876).

<sup>ii</sup> 1963 AIR 1295, 1964 SCR (1) 332.

<sup>iii</sup> The Constitution of India 1950, Art. 21.

<sup>iv</sup> Ibid.

<sup>v</sup> Baron de La Brède et de Montesquieu (1689- 1755), political philosopher of the Enlightenment and a French judge.

<sup>vi</sup> G.D. Naik, *The Right to a Clean Environment in India: Gender Perspective*, 21 VT. J. ENVTL. L., p.371 (2019); [http://vjel.vermontlaw.edu/files/2020/03/Naik\\_Final.pdf](http://vjel.vermontlaw.edu/files/2020/03/Naik_Final.pdf).

<sup>vii</sup> Id.

<sup>viii</sup> M.P. JAIN, INDIAN CONSTITUTIONAL LAW 1224 (Lexis Nexis, 8th edn. 2018).

<sup>ix</sup> G.N. Gill, *Human rights and the environment in India: Access through Public Interest Litigation*, 14(3) ENVIRONMENTAL LAW REVIEW, pp.200-218 (2012); <https://journals.sagepub.com/doi/abs/10.1350/enlr.2012.14.3.158>.

<sup>x</sup> Rhuks Temitope, *The Judicial Recognition and Enforcement of the Right to Environment: Differing Perspectives from Nigeria and India*, (2010) 3 NUJS L Rev 423; <https://www.scconline.com/Members/SearchResult.aspx#FN0005>.

<sup>xi</sup> Supra note 8.

<sup>xii</sup> World Commission on Environment and Development, “Our Common Future” (1987).

<sup>xiii</sup> S. Atapattu, *The right to a healthy life or the right to die polluted? The emergence of a human right to a healthy environment under international law*, TULANE ENVIRONMENTAL LAW JOURNAL, pp.65-126 (2002); <file:///C:/Users/Lenovo/Downloads/2083-Article%20Text-7012-1-10-20190403.pdf>.

<sup>xiv</sup> See Hague Declaration on the Environment, Mar. 11, 1989, 28 I.L.M. 1308.

<sup>xv</sup> Supra note 8.

<sup>xvi</sup> Id.

<sup>xvii</sup> UNEP - Principle 10 and the Bali Guideline.

<sup>xviii</sup> Supra note 8.

<sup>xix</sup> Id.

<sup>xx</sup> What is Paris Agreement?; <https://unfccc.int/process-and-meetings/the-paris-agreement/what-is-the-paris-agreement#:~:text=The%20Paris%20Agreement-,What%20is%20the%20Paris%20Agreement%3F,a%20sustainable%20low%20carbon%20future>.

<sup>xxi</sup> Id.

<sup>xxii</sup> The Paris Agreement as a Human Rights Treaty; [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3192106#:~:text=change%2C%20respect%2C%20promote%20and%20consider,of%20the%20regime%20it%20establishes.&text=on%20human%20rights%20and%20the%20environment%2C%202012%2D2018](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3192106#:~:text=change%2C%20respect%2C%20promote%20and%20consider,of%20the%20regime%20it%20establishes.&text=on%20human%20rights%20and%20the%20environment%2C%202012%2D2018).

<sup>xxiii</sup> Puneet Pathak , *Human Rights Approach to Environmental Protection*, SSRN PAPERS; <https://poseidon01.ssrn.com/delivery.php?ID=016013006095020021082127122126115029038020028004063010126024124075031119125028103124036118001032056056002117070126064107022092041061069087049097106080085092114103086017066015004087004077108106026004095119122087003096127068015111005085092117088009084092&EXT=pdf>.

<sup>xxiv</sup> THE CONSTITUTION OF INDIA, Part IV.

<sup>xxv</sup> Id., Art. 48A



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<sup>xxvi</sup> Human Rights and Environment; <http://www.legalserviceindia.com/legal/article-929-human-rights-and-environment.html>.

<sup>xxvii</sup> THE CONSTITUTION OF INDIA, Art. 21.

<sup>xxviii</sup> Id., Art. 14.

<sup>xxix</sup> Id., Art. 19.

<sup>xxx</sup> Id., Part IVA, Art. 51A (g).

<sup>xxxi</sup> 1987 AIR 1086, 1987 SCR (1) 819.

<sup>xxxii</sup> <https://blog.ipleaders.in/right-to-clean-environment-m-c-mehta-v-union-of-india/>.

<sup>xxxiii</sup> (1997) 1 SCC 388.

<sup>xxxiv</sup> 1985 AIR 652, 1985 SCR (3) 169.

<sup>xxxv</sup> AIR 1996 SC 2715.

<sup>xxxvi</sup> 1997 2 SCC 353.

