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CHAPTER 2

SUPREME COURT ON RIGHT TO A HEALTHY ENVIRONMENT OVER THE YEARS

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I. SUPREME COURT ON RIGHT TO A HEALTHY ENVIRONMENT OVER THE YEARS.

Fundamental to the realization of the right to life is the health of the environment as recently stated by the Supreme Court in one of its decision in 2020. Justice D.Y Chandrachud in his judgment coined the term environmental rule of law, which is fundamental and is essential for environmental governance. Journey, which started in 1972 with Stockholm, resulted in amendments thereafter in the constitution and fueled by judicial activism resulting in the development of the right to a healthy environment as one of the facets of the right to life. There has been a tremendous increase in environmental laws and institutions, which has reduced environmental degradation. However, there exists a gap in the implementation and enforcement of these laws, which can

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be bridged through the concept of environmental rule of law. Sustainable development is at the center of development keeping in mind the environmental rule of law. Environmental problems have been on the rise in India. The problems are of a varied nature. In the constitutional context, majorly the problem comes concerning the duty of the state in fulfilling its obligation as a part of the Directive Principle of State Policy. Another area is the conflict of the right to a healthy environment with other fundamental rights and a correlative duty of the citizens. The fundamental right to a healthy environment has developed through judicial decisions with the use of interpretation of Art 48-A, 51(A)(g), and Art 21 of the constitution. This chapter tries to trace the journey from Stockholm until now through various judgments and how the interpretation has broadened from developing right to the environment as part of the right to life to the health of the environment is at the center of right to life. Environmental rule of law as a new dimension to understanding right to life under Art 21.

II. STOCKHOLM DECLARATION AND BEYOND

The story concerning environmental awareness and the role of government started with the Stockholm conference in 1972. The United Nations Conference on the Human Environment, held in Stockholm from 5 to 16 June 1972, considered the need for a common outlook and for common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment. It was proclaimed at Stockholm that -

"The protection and improvement of the human environment is a major issue which affects the well-being of peoples and economic development throughout the world; it is the urgent desire of the peoples of the whole world and the duty of all Governments."¹

This point proclaimed the fact that to overcome the environmental problems it is the duty of the government of the nations and the urgent desire of the peoples.

Another point that was proclaimed brings to the notice the plight of the developing countries where the priority is development but

1. <https://digitallibrary.un.org/record/523249?ln=en> (accessed on 7th nov 2020)

such development should be made keeping in mind safeguard and to improve the environment.

"In developing countries, most of the environmental problems are caused by under-development. Millions continue to live far below the minimum levels required for a decent human existence, deprived of adequate food and clothing, shelter and education, health, and sanitation. Therefore, the developing countries must direct their efforts to development, bearing in mind their priorities and the need to safeguard and improve the environment. For the same purpose, the industrialized countries should make efforts to reduce the gap between themselves and the developing countries. In industrialized countries, environmental problems are generally related to industrialization and technological development."²

It also called upon the local and national governments to bear the greatest burden for large-scale environmental policy and action within their jurisdictions. It is from here the responsibility comes on to the government to take measures for environmental protection. Looking into principle 1 of the Stockholm conference one can conclude that the insertion of Art 48-A and 51(A)(g) and interpretation of Art 21 is inspired by the decisions and principles discussed over at the Stockholm conference-

PRINCIPLE 1

"Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that 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. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated."³

III. CONSTITUTIONAL PROVISIONS

As a consequence of the Stockholm Declaration of 1972 and India is one of the parties to it, the Indian Parliament amended the Indian

2. Supra note 1

3. Supra note 1

Constitution and added Articles 48A, and Article 51(A)(g) in the constitution as part of the Directive Principle of State Policy and as a Fundamental Duty.

Article 4⁴ [48-A. Protection and improvement of environment and safeguarding of forests and wildlife

48-A.⁵ Protection and improvement of environment and safeguarding of forests and wildlife.—The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.

6 Part 4-A — Fundamental Duties

51-A. Fundamental duties.—It shall be the duty of every citizen of India—

(g) to protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures;

Part 3 — Fundamental Right

The right to life is the essence of all other types of rights because it refers to the core existence of human beings.⁷ The right to life is a well-established international human right that is embodied in major international and regional instruments: Article 3 of the Universal Declaration of Human Rights (UDHR), Article 3 of the International Covenant on Civil and Political Rights (ICCPR), Article 4 of the African Charter on Human and Peoples' Rights (Banjul Charter), Article 4 of the American Convention on Human Rights (ACHR) and Article 2 of the European Convention on Human Rights (European Convention). General Comment 6 of the UNHRC describes the right to life as a 'supreme' and non-derogable human right that should not be interpreted narrowly.⁸ Several national and regional courts have drawn upon this link between environmental protection and the right

4. *Ins.* by the Constitution (Forty-second Amendment) Act, 1976, S. 10 (w.e.f. 3-1-1977).

5. *Supra* note 4

6. *Ins.* by the Constitution (Forty-second Amendment) Act, 1976, S. 11 (w.e.f. 3-1-1977).

7. Robin Churchill, "Environmental Rights in Existing Human Rights Treaties," in *Human Rights Approaches to Environmental Protection*, ed. Alan E. Boyle and Michael R. Anderson (Oxford: Clarendon Press, 1996), 90.

8. *General Comment 6: The Right to Life*, par. 1.

to life. Of special importance is the Indian judiciary, which is known for its proactive role in defending the environment through the expansion of the right to life to include environmental interests and through its reliance on unenforceable directive principles to interpret and expand fundamental rights. The Indian Supreme Court interpreted the constitutional right to life in a broad way as to secure environmental protection in both its anthropocentric and ecocentric dimensions. This interpretation promoted the status of human rights and initiated a rich environmental jurisprudence in India.

IV. ROLE OF SUPREME COURT IN THE INTERPRETATION OF ARTICLE 21

In the case of *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*⁹, two writ petitions, brought before the Supreme Court under Article 32 and 51A(g) of the Constitution as public interest cases, sought the Court's help in abating the pollution caused by limestone quarries in the Mussoorie Hills of the Himalayas. The Court appointed several inspecting committees and, based on their reports, ordered the closing down of several mines. In its reasoning, the Court maintained that the preservation of the environment and to keep the ecological balance unaffected is a task not only governments but every citizen must undertake as this is the social obligation of every citizen, his fundamental duty as enshrined in Article 51A(g) of the Constitution. That was the first time the right to a clean environment found its expression in the Indian justice system.

In the case of *Abhilasha Textile v Rajkot Municipal Corporation*¹⁰, the Corporation issued a notice to Abhilasha Textile to desist in using the premises to discharge effluent onto the public road within a certain time of the factory would have to be closed. Abhilasha Textile put forward an argument that because it conducts business in the local community and gives employment to the people, the closing of the factory would affect their livelihood. Further, they argued that the notice which was issued to them did not allow them to be heard which amounted to a violation of natural justice. However, the question was whether there is any right to carry on business or trade-in in an

9. 72 AIR (1985) 2 SCC 431.

10. AIR 1988 Guj.

unregulated manner-causing nuisance to the public and a health hazard to society. Article 19(6) states that everyone has the right to carry on business or trade, but it is subject to reasonable restrictions when the place of the business is not regulated in the interest of the public. The provision regarding fundamental duties of the citizens contained in Article 51A(g) of the Constitution enjoins upon all citizens the duty to protect and improve the natural environment. There is no way the textile factory owner would be protecting the natural environment by discharging effluents from the factory to the public road and public drainage. Article 51A(g) of the Constitution puts a clear restriction on the fundamental right to carry on trade or business.

In the case of **Damodhar Rao**¹¹, the Andhra Pradesh High Court prohibited the government from constructing residential houses on a piece of land previously allocated for a recreational park. In the proceedings, Judge J. Choudhary emphasized the need to develop India's environmental law by linking the issue of environmental protection with and personal liberty enshrined in Article 21 of the Constitution.¹²

In the **M.C Mehta v Union of India**¹³ cases, an action was brought to court by the petitioners under Article 32 of the Constitution as public interest litigation in connection with the pollution of the river Ganges. There existed statutory provisions to prevent pollution but there was no enforcement instrument. The continued discharge of effluents or toxic substances into the river was causing nuisances to the area. The petitioners were activists who were concerned about the health and the livelihood of those living in the area around the Ganges. The reasoning, in that case, linked the petitioner's claim to Article 21 of the Constitution vis à vis with Article 48A and Article 51 A which give effect to the enforcement of environmental protection. Article 21, which protects the right to livelihood, can be enforced directly by an individual under Article 32. In the Mehta cases, the pollution of the river was dangerous for the inhabitants using the river. In that case, the

11. See: Damodhar Rao, AIR 1987 AO 171.

12. M. Abraham, *The Indian Judiciary and Development of Environmental Law*, South Asia Research, Vol. 11, 1991, p. 65.

13. AIR 1988 SC 1037. 526

court enforced Article 21 taking into account Articles 48 A and 51A (g). The Supreme Court laid down strict conditions to control corporations engaged in the hazardous production of toxic substances and the rules of absolute liability and directed the government to enforce standards required under the law. The Supreme Court asserted the importance of Article 48A and 51A (g) of the Constitution. This case proved that collective rights could be enforced through Article 21 linked with Articles 48 A and 51A (g). In the Mehta case it was pointed out that, apart from supplying water, the Ganges River is also of religious importance to the people living in the area. The social action group fighting on behalf of the community interpreted Article 25(1) which provides for the right to profess, practice, and propagate religion, linking it to 48 A and 51A(g) to establish their claim.

In the **Mukti Sangharsh Movement v State of Maharashtra** case¹⁴, the petitioners complained about an indiscriminate commercial extraction of sand from the Yerala riverbed leading to the desertification of about thirty-eight thousand hectares of land in the valley destroying the ecological balance of the area. This case was brought to court by the social action group who were interested in environmental protection and safeguarding the local ecology. In most cases, the petitioners seek, the enforcement of statutory environmental law.

RECENT CASE LAWS (2016-2020)

In the case of **Municipal Corporation of Greater Mumbai V Hiranman Sitaram Deorukhar**¹⁵ court held that area once reserved for a garden in the development plan under statutory provisions could not later be converted to any other use. It would be a violation of rights under Art 21 and 48-A and duty under art 51(A) (g) of the constitution apart from the statutory duty involved. Reservation and preservation of open space are of vital public interest based on the doctrine of public trust. Statutory authorities should act in trusteeship for common properties such as air, open spaces, sea, water, and forests.

In the case of **Arjun Gopal V Union of India**,¹⁶ the matter was concerning the conflict between art 19(1) (g), 25 with art 21. The facts

14. R.S. Pathak, *Human Rights and the Development of the Environment Law in India*, Commonwealth Law Bulletin, Vol. 14, 1988, p. 1175.

15. 2019 SCC 411

16. 2019 13 SCC 523

were related to the bursting of firecrackers in Delhi during Diwali and other festive seasons resulting in pollution, which results in the violation of the right to health under art 21 of the constitution. Court held that in case of conflict between the right to health under Art 21 and art 25 and art 19(1)(g). Right to health under art 21 will have primacy over other fundamental rights. Therefore, the court accepted the central government's direction of restriction on the sale and bursting of firecrackers during Diwali 2018 accepted with detailed directions.

In the case, *Lal Bahadur V State of U.P.*¹⁷ court held that modifying master plan and changing green belt to the residential area even after following statutory procedure is violative of Art 21, 48-A, and 51(A) (g) of the constitution. Court also held that it is a breach of the Public trust doctrine.

In *M.C Mehta V Union of India*¹⁸ court held that right to life means not only leading a life with dignity but include within its ambit the right to lead a healthy robust life in a clean atmosphere free from pollution and if there is conflict between health and wealth obviously health will have to be given precedence.

In *Arjun Gopal and others, v Union of India and others*¹⁹ was about degrading air quality in the NCR region posing serious health and environmental Hazards. The firecrackers shoot up the pollution level in Diwali and the wedding season. Court held that where there are threats of serious and irreversible damage lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In *Arjun Gopal and Ors. Vs. Union of India (UOI) and Ors.*²⁰ The Petitioners approached the present Court seeking emergent reliefs concerning the extreme air pollution in the National Capital Region (NCR). The Petitioner sought wide-ranging reliefs against the use of fireworks including firecrackers, prevention of harmful crop burning, dumping of malba, and further steps towards environmental purity. However, the Supreme Court restricted to grant of interim relief in

17. 2018 15 SCC 407

18. 2018 SCC online sc 2122

19. 2017 1 SCC 412

20. MANU/SC/1652/2016

respect of fireworks. The primary contention of the Petitioners was that the use of fireworks in the NCR has posed a serious problem to the inability of the air during Diwali and the wedding season. According to the Petitioners, the problem has reached proportions in the NCR, which are not tolerable and are causing immense harm to peace, well-being, and health both physical and mental. The court was of opinion that there was no serious opposition to the impact of fireworks on the ambient air and the unhealthy effects of fireworks on it. The opposition was mainly about the total banning of fireworks in all circumstances.

In *Arjun Gopal and Ors. Vs. Union of India (UOI) and Ors.*²¹ the present petition filed seeking direction to ban the use of fireworks, sparklers, and minor explosives in any form, during festivals or otherwise. The public interest relief sought in this case was considered by the court from two perspectives: firstly, from preventing air pollution through the bursting of fireworks and secondly, by invoking the provisions of the Explosives Act, 1884 and the Explosives Rules, 2008 framed thereunder for preventing air pollution by restricting the possession and sale of fireworks in the National Capital Region.

In *Arjun Gopal and Ors. Vs. Respondent: Union of India (UOI) and Ors.*²² Writ Petition was filed on September 24, 2015, on behalf of three infants, who were made Petitioners in the instant writ petition. This petition was filed through their next friends, i.e. their fathers, who were concerned about the health of their children. However, Petitioners claimed that children were much more vulnerable to air pollutants as exposure thereto might affect them in various ways, including aggravation of asthma, coughing, bronchitis, retarded nervous system breakdown, and even cognitive impairment. At the same time, it was emphasized that air pollution hit its nadir during Diwali time because of indiscriminate use of firecrackers, chemical composition whereof increases harmful particulate matters such as PM2.5 or PM10 at alarming level thereby bringing situation of 'emergency'. Petitioners prayed for a direction to official Respondents to take possible measures for checking pollution by striking at causes of pollution, which included seasonal crop burning, indiscriminate dumping of dust/malba and other pollutants, etc. Prayer also included banning the use,

21. MANU/SC/1141/2017

22. MANU/SC/1191/2018

in any form, of firecrackers, sparkles, and minor explosives, in any form, during festivals or otherwise. Court held that though the burning of crackers during Diwali was not the only reason for worsening air quality, at the same time, it contributed to air pollution in a significant way. Post-Diwali air pollution in 2017 was less compared to 2016 Diwali, which was a result of lesser fireworks in 2017. This again indicated a direct causal connection between burning crackers during Diwali and air pollution. Another immediate effect of the burning of crackers was that it resulted in a substantial increase in PM2.5 level, which was a very serious health hazard. This resulted in severe noise pollution as well, which had acute psychological, mental, and even physical affect on animals. The burning of crackers during Diwali is a part of religious practice. Article 25 of the Constitution was subject to Article 21 and if a particular religious practice was threatening the health and lives of people, such practice was not entitled to protection under Article 25. In any case, balancing could be done here as well by allowing practice subject to those conditions which ensure nil or negligible effect on health. The right to health coupled with the right to breathe clean air leaves no manner of doubt that it is important that air pollution deserves to be eliminated and one of the possible methods of reducing it during Diwali is by continuing the suspension of licenses for the sale of fireworks and therefore implicitly, prohibiting the bursting of fireworks.

In **Jitendra Singh Vs. Ministry of Environment and Ors.**²³ Respondent No. 6 using excavators and other heavy machinery attempted to forcibly takeover possession of a common-pond, which had been in use by local villagers for a century. The Appellant approaches National Green Tribunal by way of an Original Application under Section 14 of the NGT Act for adjudication of these environmental issues. The Tribunal dismissed the Appellant's grievance against allotment of local ponds to private industrialists. Court held that the action of the Respondent-authorities contravenes their Constitutional obligations. Article 48-A of the Constitution casts a duty on the State to "endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country", and Article 51-A (g) expects every citizen to perform his fundamental duty to "protect and improve

23. MANU/SC/1615/2019

the natural environment". A perusal of our Constitutional scheme and judicial development of environmental law further shows that all persons have a right to a healthy environment. It would be gainsaid that the State is nothing but a collective embodiment of citizens, and hence the collective duties of citizens can constructively be imposed on the State. Such an interpretation of the Constitution has also been adopted in **MC Mehta v. Union of India**.²⁴ Court further held Protection of such village-commons is essential to safeguard the fundamental right guaranteed by Article 21 of our Constitution. These common areas are the lifeline of village communities, and often sustain various chores and provide resources necessary for life. Waterbodies, specifically, are an important source of fishery and much-needed potable water. Many areas of this country perennially face a water crisis and access to drinking water is woefully inadequate for most Indians. Allowing such invaluable community resources to be taken over by a few is hence grossly illegal.

In **M.C. Mehta Vs. Union of India (UOI) and Ors.**²⁵ It was noted by this Court that there is a blatant violation of Article 21 of the Constitution i.e., Right to Life by the serious kind of pollution which is being caused by various factors including stubble burning. The stubble burning in October/November comprises approximately 40% of the pollution, but for the remaining period, stubble burning is not the cause of pollution in the Delhi and NCR region. It was noted by this Court that various other factors were responsible for causing pollution for example; Construction and demolition activities, Open dumping of waste/garbage, Unpaved roads/pits, Road dust, Garbage burning, Traffic congestion, Various hot-spots in Delhi and NCR regions were identified as noted in the report. This Court has noted the problem of farmers in stubble burning as a short gap between two crops due to which agriculturists indulge in stubble burning.

In **Hanuman Laxman Aroskar and Ors. Vs. Union of India (UOI) and Ors.**²⁶ On 1 May 2000, the Government of India communicated its approval for the setting up of an airport at Mopa and the closure of the existing airport for civilian operations on the commissioning of the

24. MANU/SC/0586/1988

25. MANU/SC/0032/2020

26. MANU/SC/0444/2019

new airport. Subsequently, on 1 July 2010, the earlier decision was modified to allow for the continuation of civilian aircraft operations at Dabolim even after the commissioning of the new airport. The process of land acquisition commenced in 2008 under the Land Acquisition Act, 1894. Originally, the land area anticipated for the development of the project was pegged at 4,500 acres. During the pendency of project appraisals, the area required for the proposed airport stood reduced to 2,271 acres. A Miscellaneous Application was filed by the State of Goa before the NGT on 2 July 2018 seeking permission for the felling of trees. By its judgment, the NGT disposed of both the appeals and the Miscellaneous Application filed by the State of Goa, upholding the EC and imposing additional conditions to safeguard the environment. This Court has been informed that the felling of trees was initiated on 3 September 2018 and completed on 14 January 2019. Assailing the judgment of the NGT, two appeals have been filed before this Court: one by Hanuman Laxman Aroskar and the other by the Federation of Rainbow Warriors. Learned Counsel appearing on behalf of the Appellants urged that the EIA report which is carried out under the terms of the 2006 notification is a tool to evaluate the environmental consequences of a proposed activity. The proposed international airport, being a Category 'A' project, is governed by the second, third, and fourth stages of scoping, public consultation, and appraisal respectively envisaged under the 2006 notification. In addition to the 2006 notification, the Guidance manual furnishes a significant signpost in the procedure envisaged before the grant of an EC. The project proponent is required to submit Form 1 complete with relevant details of the proposed project and the status of the environment. Court said

"In a domestic context, environmental governance that is founded on the rule of law emerges from the values of our Constitution. The health of the environment is key to preserving the right to life as a constitutionally recognized value under Article 21 of the Constitution. Proper structures for environmental decision making find expression in the guarantee against arbitrary action and the affirmative duty of fair treatment under Article 14 of the Constitution."²⁷

27. MANU/SC/0444/2019

Over the last sixty years, the Supreme Court of India has provided a broader context than intended by the framers of the Constitution and interpreted by the earlier judges²⁸. Supreme Court of India has often extended the meaning of rights well beyond what some jurists call the original intent.

V. ENVIRONMENTAL RULE OF LAW

Fundamental to the outcome of the decisions of the Supreme Court is the quest for environmental governance within a Rule of law paradigm. Environmental governance is founded on the need to promote environmental sustainability as a crucial enabling factor, which ensures the health of our ecosystem.

Since the Stockholm Conference, there has been a dramatic expansion in environmental laws and institutions across the globe. In many instances, these laws and institutions have helped to slow down or reverse environmental degradation. However, this progress is also accompanied, by a growing understanding that there is a considerable implementation gap between the requirements of environmental laws and their implementation and enforcement both in developed and developing countries alike.²⁹ The environmental Rule of law seeks to address this gap. The environmental Rule of law provides an essential platform underpinning the four pillars of sustainable development—economic, social, environmental, and peace.³⁰ It imbues environmental objectives with the essentials of Rule of law and underpins the reform of environmental law and governance.³¹ The environmental Rule of the law becomes a priority particularly when we acknowledge that the benefits of environmental Rule of law extend far beyond the environmental sector. While the most direct effects are on the protection of the environment, it also strengthens Rule of law more broadly, supports sustainable economic and social development, protects public health, contributes to peace and security by avoiding

28. Ashok H. Desai, "Expanding the Right to Life and Equality", in R. N. Trivedi (Ed.), *World of All Human Rights*, Universal Law Publishing Co., New Delhi, 2010, p. 210.

29. 51 United Nations Environment Programme, *First Environmental Rule of Law Report*. Available at https://wedocs.unep.org/bitstream/handle/20.500.11822/27279/Environmental_rule_of_law.pdf?sequence=1&isAllowed=y

30. *Ibid*

31. *Ibid*

and defusing conflict, and protects human and constitutional rights.³² Similarly, the Rule of law in environmental matters is indispensable "for equity in terms of the advancement of the Sustainable Development Goals³³, the provision of fair access by assuring a rights-based approach, and the promotion and protection of environmental and other socio-economic rights."³⁴

32. Ibid

33. SDGs

34. UN Environment, Environmental Rule of Law. Available at <https://www.unenvironment.org/explore-topics/environmental-rights-and-governance/what-wedo/promoting-environmental-rule-law-0>