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[SHORT ARTICLE]

Revisiting the conflict between development and the right to a healthy environment under Article 21 of the Constitution of India

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Abstract: Environmental pollution has been ascertained as a polycentric problem which affects the existence of human beings. Homo sapiens are observed as Mother Nature's worst enemy and the greatest promise too. With the expansion of urbanization and industrialization, the environment is rapidly getting polluted. The Apex Court of India in various precedents has accorded that right to a pollution-free environment falls within the scope of Article 21 of the Constitution of India. On the contrary, Article 21 also extends its ambit towards the recognition of the right to development and urbanization, which too are considered essential for the growth of the society. Article 21, considered as the "heart" of the Constitution of India, provides an extended meaning to fundamental rights, which is not exhaustive. However, such clashes nullify the rights and provoke the need of a redefinition of the extent of the fundamental rights ensured under Article 21.

The researcher aims to analyse the unrecognized conflict between the two rights affirmed by Article 21 of the Constitution of India and also to revisit crucial Indian precedents in the said context. The paper evaluates the origin of the rights and argues about the proposition, to review Article 21 and the judiciary's arbitrariness towards the conflict.

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The paper intends to harmonize the collision between the two rights and also to provide various suggestions to resolve the issue.

Keywords: Right to Environment; Development; Article 21; Fundamental Rights.

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INTRODUCTION

"Our Mother Earth has been offering us enough for gratification of every human's needs, but does not offer enough for human's greed."

- Mahatma Gandhi.

Since times immemorial, human development and civilization's essential survival has been the necessity of clean and green surroundings.¹ "Man is nature's best promise but has been indomitably the worst enemy."² The progress in society through industrialization invites pollution. When society advances, urbanisation is bound to happen, and with that, environmental pollution becomes inevitable. Therefore, it can be noted that industrialisation and pollution are interlinked and positively correlated. Urbanisation, along with industrialization, is acknowledged as a necessary evil and pollution is the surest sufferance. A serious turn of events in the present era, in the context of environmental pollution and management, has been experienced by the world. Extensive reliance of human society on nature has had a dreadful and adverse effect on the environment. Population explosions, destitution, urbanization, exhaustion of conventional sources of energy, are all considered to be widespread causes of environmental degradation across the globe.³ Scientific and technological progress in the recent past has created unparalleled pressure on the environment.

¹ Uday Shankar & Saurabh Bindal, *A Judicial Conundrum between right to environment and development*, C.U.L.J. 1, 49-68 (2012).

² DR. P. S. JASWAL, DR. N. JASWAL et. al. V. JASWAL, *THE BOOK ON ENVIRONMENTAL LAW* (4th ed. 2015).

³ Karnataka Industrial A.D. Board v. C. Kenchappa, AIR (2006) SC 2038 (India).

This has led to an untimely demolition of the environment.⁴ While analyzing the problem, UNESCO's World Culture Report⁵ suggested that around 15 percent of the world population listed 'environment' as a major social issue.⁶ The right to access a healthy and clean environment has been acknowledged as a core and elementary human right enshrined within the scope of Article 21 of the Constitution of India. One of the significant reasons for urbanization and industrialization is to accelerate economic development by eliminating acute poverty. The researcher is of the opinion that development should not be done at the cost of the environment and other species. A pollution-free environment is the need of the hour as it is crucial for the survival of the inhabitants of the Earth. Environmental degradation and pollution can be prevented through v measures like "sustainable development". It can be included as a principle of environmental law where the requirement, needs, or demands of present propagation are satisfied without jeopardizing the requirement of the forthcoming propagation.⁷ The concept gained its first prominence and recognition at the United Nations Conference on Environment and Development (UNCED) also known as "The Earth Summit" in Rio de Janeiro in 1992 following which the notion of sustainable development rapidly gained wide urgency and promoted awareness towards environmental disparities. The principle highlighted several essential links

⁴ Shri S. Pandey v. State of W.B., 1987 SCR (2) 223 (India); T.N.G. Thirumulpad v. U.O.I., (2000) 10 SCC 579 India).

⁵ UNESCO, World Culture Report: Cultural Diversity, Conflict and Pluralism (2000).

⁶ Fred Langeweg, Henk Hilderink, Rob Maas, *Urbanization, Industrialization and Sustainable Development*, NATIONAL INSTITUTE OF PUBLIC HEALTH AND THE ENVIRONMENT, GLOBAL DYNAMICS AND SUSTAINABLE DEVELOPMENT PROGRAMME (2000) March.

between globalisation, planet-wide risks and responsibility which created a need of action by the international community.⁸ The objectives of the concept are forward-looking and broad-based which transcend the class, language, caste or regional barriers. It aims to maintain the standards of living of the largest group of people with equity and justice, conserve and protect the natural resource from exploitation, respect biodiversity and seek peaceful co-existence of all nations in the world by supporting local or indigenous communities.⁹ Currently, the Homo sapiens are at the heart of seeking the true essence of sustainable development. The future existence and survival of humans shall be possible entirely on its implementation and is dependent on the restricted scope of environmental changes.

The systematic interplay between environmental, socio-economic, and cultural factors acts as an integral aspect of sustainable development.¹⁰ The right to a healthy environment has formed an integral part of human rights. Just like human rights stand for values such as liberty, equality, the autonomy of individuals, etc. Amid human rights recognized by the legislature and the Indian judiciary is also the right to a healthy environment. The right to development and the right to a healthy environment draw their true genesis from Article 21 of the Constitution of India. The right to a healthy environment also has an extended definition and scope under the Directive Principles of State Policy (DPSP) provided in Part IV of the Constitution of India.

⁸ Mrs. K. Archana, *A Conceptual Study of Sustainable Development in the era of Globalization*, IJSR 3(5) (May 2013).

⁹ Dr. Z. M. Nomani, *Environment, Sustainable Development and Globalization: A Plea to Indian Legislature*, Counter Currents (2007).

¹⁰ Prof. (em.), Dr. U. Svedin, *Urban Development and the Environmental Challenges*, commissioned by the Directorate general for Regional Policy, EU.

The Research Paper aims at addressing the conflict between the right to a healthy environment and the right to Industrial development or urbanization. The contradiction between the natures of these rights raises serious questions on the implementation of the rights guaranteed under Article 21 of the Constitution of India. The implementation of these rights can be affected due to several factors like economic, socio-economic, and political or cultural factors. The mechanism and implementation of these rights reasonably question the institutional legitimacy of the working of the judiciary. The judiciary shall be extremely cautious while deciding upon such rights as it may damage the foundation of human rights.

HISTORICAL BACKGROUND: RECOGNITION OF THE CONFLICT

Almost 250 years ago, Plato discovered the problem of environmental pollution. The issue is as ancient as the existence of *Homo sapiens*.¹¹ Nonetheless, development and environmental pollution have both been a necessary placard of all the concerned stakeholders. The rapid population growth in Europe (from 75 million in the 16th Century to almost 300 million by the end of the 19th Century) has unfavourably affected the environment. Deforestation and water pollution lead to a decline in fertility of land due to overuse in Europe.¹² Due to overpopulation in the European countries, people began migrating to countries like Africa, America, Australia, and parts of Asia. In the past centuries, the socialist states have also experienced severe environmental deterioration due to the

¹¹G. Handl, *Rio Declaration on Environment and Development*, Introductory Note, Audiovisual Library of International Law (21 Aug. 2020, 5:24 PM), <https://legal.un.org/avl/ha/dunche/dunche.html>.

¹²D. Worster, *The Ends of the Earth: Perspective on Modern Environmental History*, CAMBRIDGE UNIVERSITY PRESS (1988).

incompetence of their authorities. However, in the 20th century, mankind realized that it was in dire need of a global environmental law. The law was required to protect the environment from any further deterioration as risks related to the environment had become irrefutable. Henceforth, in 1972, the first U.N. Conference on the Human environment was held. The conference encouraged various countries to frame legislation and statutes related to environmental issues.¹³

In the 21st Century, urbanization became a global trend. A large chunk of the population (worldwide) had started moving to urban areas. Currently, more than half of the world's population lives in urban areas and by 2030, 60 percent of the total population is expected to be doing the same.¹⁴ With rapid industrialisation, the formation of slums, inadequate livelihood, and great disparities begin to surface.¹⁵

CONSTITUTIONAL PERSPECTIVE AND APPROACH

With a rise in environmental disputes, (including the Lavasa¹⁶ and the Posco¹⁷ case) a wider picture was placed before the Indian judiciary, and it struggled to strike a balance between

¹³E.B. Weiss, *The Evolution of International Environmental Law*, 54 Japanese Y.B. International Law, 1-27 (2011).

¹⁴United Nations, Urbanization and Human Rights (Office of the High Commissioner) (Aug 21, 2020; 7:42 PM), <https://www.ohchr.org/EN/Issues/Urbanization/Pages/UrbanizationHRIndex.aspx>.

¹⁵ *Id.*

¹⁶A. Antony & D. Pandya, *Billionaire's Folly Becomes Bankers' Nightmare*, BLOOMBERG QUINT, (Dec. 19, 2019, 12:54 AM), <https://www.bloombergquint.com/business/in-lavasa-a-billionaire-s-folly-becomes-a-banker-s-nightmare>

¹⁷Nitin Sethi, *Project in Odisha is over, says Posco*, BUSINESS STANDARD (Dec. 20, 2019, 7:05 PM), https://www.business-standard.com/article/companies/project-in-odisha-is-over-says-posco-116040801130_1.html.

society's interests and individual interests.¹⁸ Both the Constitutional rights are enshrined within the limits of Article 21. Article 48A talks about the protection and improvement of the environment and the safeguarding of forests and wildlife. It is integral to note that the Indian judiciary has always aimed at balancing fundamental rights and freedoms with the Directive Principles of State Policy (DPSP). In various landmark judgements, the judiciary has successfully recognized the socio-economic rights which fall directly within the ambit of the state and are in correspondence with fundamental rights.¹⁹ This pragmatic approach has led to judicial activism in India.

Fundamental rights are personal and individualistic in nature as they promote the welfare of the individual. Whereas, the Directive Principles are societarian in nature as they promote the welfare of the community. The doctrine of harmonious construction has been violated by the judiciary several times while dealing with the conflict between fundamental rights and the DPSP. In cases of conflicts, an obligation made to society shall always predominate over the obligation made to an individual.²⁰

The researcher aims to study exhaustively the conflict between the right to a healthy environment and development since both such rights must be studied simultaneously under Fundamental Rights to harmonize their clash. DPSP are not directly enforceable and executable by the Indian courts.²¹ Due

¹⁸A. E. Boyle & M. R. Anderson, HUMAN RIGHTS APPROACHES TO ENVIRONMENTAL POLLUTION, Oxford University Press (1998).

¹⁹M. C. Mehta v. Union of India, (2006) 3 SCC 399; also see, Chameli Singh v. State of Uttar Pradesh, (1997) 2 SCC 444; State of Bihar v. L. K. Advani, (2003) 8 SCC 361; J. P. Unnikrishnan v. State of Andhra Pradesh, (1993) 1 SCC 645; M. C. Mehta v. Union of India, AIR 1987 SC 1086; Gauri Shankar v. Union of India, (1994) 6 SCC 349; J. P. Ravidas v. Nav Yuvak Harijan Uttapam Society Ltd., (1996) 9 SCC 300 (India).

²⁰M.C. Mehta v. Union of India, (2004) 12 SCC 118 (India).

²¹State of Kerala v. N. M. Thomas, AIR 1976 SC 490 (India).

to this, the courts should step meticulously on such a path for the benefit of the legislature and the executive.²² However, the right to urbanization and environment both fall within the genesis of fundamental rights. The judiciary ensures that the Constitution strikes a firm balance between the welfare of an individual and that of the community as a whole.²³

Whenever the judiciary seeks to favour the interests of society over those of an individual, the doctrine of harmonious construction suffers. Article 21 cannot support both- the rights of an individual as well as those of society. Hence, it is necessary to address issues pertaining to such conflicts and conundrums. Judiciary so far, has complicated the issue and has caused a certain imbalance in society. If at all the judiciary attempts again to explain the jurisprudence of the environmental law, it shall consider (both) fundamental rights under Part III of the Constitution and the DPSP, simultaneously. The Directive Principles ensured by the Constitution of India lay down several socio-economic and political policies.²⁴ Reading the phrases "Right to healthy environment" and Right to Development" under human rights has created conflict and confusion. Moreover, the decisions of the Indian judiciary do not align with the theory of separation of powers.

SCRUTINIZING THE 'RIGHT TO LIFE': ARTICLE 21

Article 21 guarantees, all the citizens and foreigners, fundamental rights to "life and personal liberty" under the Constitution of India. For a democratic and civilized society,

²² A.B.S.K.S. v. Union of India, AIR 1981 SC 246 (India).

²³ H. R. KHANNA, MAKING OF INDIA'S CONSTITUTION, Legal Classics (2nd ed. 2009).

²⁴ DR. PANDEY, CONSTITUTIONAL LAW OF INDIA foreword by Justice H.C.P. Tripathi, Central Law Agency (CLA) (55th Ed., 2018).

attributes like life and personal liberty are extremely crucial.²⁵ Article 21 has been construed as the "heart" of the fundamental rights and has a broader ambit, which covers "right to a healthy environment" as well.²⁶ Right to Life would become insignificant and worthless if we have no access to a healthy and green environment.²⁷ For the existence and preservation of a healthy environment, a stable and balanced ecological system along with several components of life is a necessity. The Indian Judiciary has interpreted "life" in various ways with a further expansive interpretation. However, there are still various rights not expressly regarded as fundamental rights.

The Supreme court of India (in a leading case) stated, "the right to live in a civilized and democratic society indicates to live in a state with an abundance of rights like access to shelter, food, medical help, and green environment."²⁸

In the *Doon Valley Case*²⁹, the Apex Court observed that the case, involving ecological balance in the society, is first of its kind and raises a potential question of law never addressed before. However, ironically, the researcher notes that the said case was not decided in correspondence with the DPSP enshrined under Article 48-A of the Constitution of India. The plethora of fundamental rights given under Article 21 of the Constitution of India is not absolute. If Article 21 is infringed, violated, or breached, a writ petition can be filed in High Courts³⁰ as well as the Supreme Court of India.³¹ Constitution.

²⁵ Kehar Singh v. Union of India, 1 SCC 204 (1989) (India).

²⁶ Unni Krishnan v. State of A.P., AIR 1993 SC 2178; 1993 (91) ALJ 341 (India).

²⁷ Mayank Vats & Leepakshi Rajpal, *Indian Approach to Environmental Conservation*, I.J.H. Social Sciences Invention 6(4) (Apr. 2017) 64-80.

²⁸ Chameli Singh v. State of Uttar Pradesh, 1993 (22) ALR 37, 1993 AWC 1066 All.

²⁹ Rural Litigation and Entitlement Kendra Dehradun & Ors., v. State of Uttar Pradesh & Ors., 1985 SCR (3) 169 (India).

³⁰ CONSTITUTION OF INDIA, art. 226.

³¹ CONSTITUTION OF INDIA, art. 32.

In a similar case, the Court was of the opinion that the right to life is a combination of life, personal liberty, and dignity.³²

Provision for the protection and improvement of the environment given under Article 48-A of the Constitution of India has to be read with fundamental and human rights.³³

Article 21 of the Constitution of India offers the right to existence and survival. Article 21 has certainly evolved environmental jurisprudence in India³⁴, which includes the right to healthy surroundings including breathable air, clean water, fewer air impurities, and a noise-free atmosphere.³⁵ The Supreme Court in *Research Foundation for Science, Technology and Natural Resource Policy v. U.O.I. & Ors.*,³⁶ observed that the fundamental right to information and human health is an inviolable part of Article 21, and it must be administered by the environmental laws and collective principles.

Article 21 of the Constitution of India has several rights attached to it, including the right to livelihood. The right to livelihood as components of Article 21 were outlined in *O. Tellis v. Bombay Municipal Corp.*³⁷ The case came before the Apex Court as a writ petition by pavement and slum dwellers in Bombay seeking to be allowed to stay on pavements against their order of eviction during monsoon months by Bombay Municipal Corporation. In this case, it was elucidated that if 'right to livelihood' cannot be included as a possible division of rights under Article 21, then it would subsequently lead to

³² Francis Coralie Mullion v. Administrator, Union Territory of Delhi and Ors., 1981 Cri.L.J. 306; (1981) 1 SCC 608; (1981) 2 SCR 516 (India).

³³ Subhash Kumar v. The State of Bihar and Ors., AIR 1991 SC 420; MANU/BH/0348/2007 (India).

³⁴ T. Damodhar Rao and Ors., v. The Special officer, Municipal Corporation of Hyderabad and Ors., AIR 1978 AP 171; MANU/AP/022/1987 (India).

³⁵ P.A. Jacob v. The Superintendent of Police, Kottayam & Ors., AIR 1993 Ker 1, ILR 1993 (1) Kerela 248 (India).

³⁶ AIR 2012 SC 2627 (India).

³⁷ (1985) 3 SCC 545 (India).

deprivation of the progress in the society as well. In an identical precedent, a part of the judgement was overruled, and it observed that 'right to livelihood' cannot be addressed as an ordinary right for the advancement of society, economic betterment and merely concerned with infrastructure or construction operations.³⁸

The right to development includes a superfluity of approaches or procedures which are criminal, cultural/social, political, economic, and civil in nature for improvement of people's well-being. It is an integral and pertinent part of human rights. Moreover, the construction of a dam or a bridge can be regarded as an attempt to achieve infrastructural development which, too, is an important aspect of a developing economy. Such development-related projects are regarded as integral components of the right to development.

RIGHT TO A HEALTHY ENVIRONMENT VERSUS RIGHT TO DEVELOPMENT

Originally, it started with the case *R.L. & E Kendra v. Union of India*.³⁹ In this case, the Supreme Court (while considering the two rights) appointed an expert committee known as '*Bhargav Committee*'. The Court was of a view that lime-stone quarrying and excavation of the lime-stone deposits affected the perennial water springs causing environmental disturbance. It was considered that it is the price to be paid by human beings in order to ensure that the environment is well protected without any hazard to livestock, cattle, and home to other species. Consequently, the court decided and ordered the closure of limestone quarries. An administrative and monitoring committee was set up to restore the damage caused to the area

³⁸ N. D. Jayal and Anr. v. Union of India, (2004) 9 SCC 362 (India).

³⁹ 1989 SCC Supp. (1) 537 (India).

due to the mining activities and other such operations. Further, it emphasized on the fact that afforestation and soil conservation programmes must be taken up in the closed quarries to provide employment to the workers who were thrown out of the employment due to closure of quarries.

Likewise, in *Kanpur Tanneries Case*,⁴⁰ the SC harmonized the relationship between the two contradicting rights by stating, "*in certain cases of such nature the court may be bound to issue such applicable or appropriate directions, if the court finds that public nuisance or such other wrongful act which affect or are likely to affect public is being committed and such other statutory authorities. For any such breach of right, there shall be remedy.*" In another landmark precedent,⁴¹ the SC decided the issue and question of law with suo moto cognizance by applying the Public trust doctrine.

In another case, *Narmada Bachao Andolan v. UOI & Ors.*,⁴² the SC stated, "the protection of several rights must be allocated to the citizens of India where there is no contravention with the jurisdiction of the dispute or matter". Henceforth, the courts must act within their judicial limitations in order to adhere to the principle of 'Rule of Law' and also those of public interest. The said case was regarding the conflict and disagreement between the government and the tribal groups residing along the banks of river Narmada. Their habitation posed obstacles in the project of damming the Narmada River. Hence, the SC ordered the displacement of indigenous and tribal populations which were obstructing the path of the project.

In *Banwasi Sewa Ashram v. State of Uttar Pradesh*⁴³, the Supreme Court stated, "*forests are regarded as the national wanted asset*" and their exhaustion shall make the environment suffer

⁴⁰ M.C. Mehta v. Union of India, (1987) 4 SCC 463 (India).

⁴¹ M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388 (India).

⁴² (2011) 7 SCC 639 (India).

⁴³ (1986) 4 SCC 753 (India).

severe consequences. However, the court realized that it must not lose sight of the fact that the progress and growth through industrialization help in attaining adequate standard of living, which is equally integral for the benefit of people.

Further, in *D.T.E.P. Group and Anr. v. Bombay S.E.S. Company Ltd.*⁴⁴, the SC said that it is the responsibility of the executive to understand the significance of public projects which are undertaken to improve the standard of living of the society. It is necessary to preserve social and ecological balance, avoid deforestation, maintain environmental virtues, preserve water from being contaminated, and much more. In this case, the court took public workers, experts and laymen into consideration to strike an essential balance by harmonizing the two conflicting provisions in question. These provisions, however, indicate towards the possibility of conflict between the rights guaranteed by Article 21.

In the case of *Vellore Citizen's Welfare Forum v. U.O.I.*,⁴⁵ the SC also relied upon the concept of 'sustainability' which is construed as an essential tool of the environmental law. The court enunciated, "*Ordinarily, the development and a clean environment have been in a perpetual clash with one another. However, it is no longer acceptable but sustainable development is the solution. Sustainable development has, therefore, been accepted as an applicable concept in order to eliminate and eradicate poverty and improve the quality of living.*" Sustainable development signifies the extent of development that takes place without adversely affecting the environment. It is pertinent to note that the answer lies in sustainable development. Henceforth, it is important to indicate that various cases portray that the court has released the necessary guidelines and has established various directives, rules, and regulations for the government to follow. The

⁴⁴ (1991) 2 SCC 539 (India).

⁴⁵ (1996) 5 SCC 647 (India).

Judiciary has a duty to maintain a balance between the clashes of such rights.⁴⁶

DENOUEMENT

Development is considered to be a comprehensive concept. The Constitution of India, apart from providing essential principles for the smooth functioning of society, has integrally stayed under the physiognomy of the DPSP. These principles scrutinize the measures which aid in building a society adhering to their concept. Such directives help build a community that is based on principles of essential human rights. Further, these directives help the government to achieve its goals. Right to Development and a healthy environment help balance the DPSP with fundamental rights, and make us understand their correlation. Internationally, the 2030 Agenda for Sustainable Development helps governments (globally) to establish cities and human settlements that are safe, sustainable, and resilient in nature.⁴⁷ Sustainable and fair urbanization must be consistent with fundamental rights and shall also ensure fair and active participation of inhabitants. Further, all urban activities must be carried out in oneness with the political, social, and economic rights- which shall lead to the empowerment of people.

To solve the conflict concerning the clash of right to development and healthy environment, the best way would be to use the doctrine of 'Harmonious Construction'. This doctrine

⁴⁶F. Nariman, 55 years of the SC- A balance Sheet of Performance (1999); U. Shankar & S. Bindal, *Judicial Adjudication of Socio-Economic Rights: Indian Perspective*, N.U.L.J. 1 (2) (2012).

⁴⁷United Nations, The 2030 Agenda for Sustainable Development and the SDGs (21 Aug. 2020, 8:04 PM), <https://www.un.org/sustainabledevelopment/development-agenda/>.

can vary as its usage differs from scenario to scenario. Environmentalism or activism shown by the Indian judiciary shall always satisfy the core of the Constitution. Henceforth, such clashes and conflicts can be redressed through just applicability of the principle of harmonious construction by the judiciary. The judiciary has to interpret the statutes accurately and intellectually to render speedy justice. As Thomas Jefferson once rightly said, *"The Constitution, on its hypothesis, is a mere wax in the hands of the judiciary, which they may twist and shape into any form as they may please to ensure justice, equality and good conscience."*
