



CONSTITUTIONAL RIGHTS OF THE HEALTHY ENVIRONMENT

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ABSTRACT

The right to live in a healthy environment was recognized in international environmental law as early as 1972 in the Stockholm Declaration, when the global community recognised the shortcomings of fast industrialisation. It has developed in most nations either directly via legislation or through judicial interpretations. In India, the right to live in a safe and healthy environment is a fundamental element of the right to life, which is protected by Article 21 of the Indian Constitution. Looking through the lens of the global pandemic, poor nations continue to underestimate the significance of our planet's health. International conferences and debates have pointed poor nations in the direction of sustainability, but if this is not followed by effective implementation, it will fail. In light of the Environment Impact Assessment Notification, this study examines the development of the right to live in a healthy environment, as well as the balance between a clean environment and economic activity (EIA 2020). It is concerned with the world's long-term viability in terms of the right to life and the right to development. What is the path forward in building climate resilience, sustainability, waste management, and health infrastructure in the post-COVIDera, given the sea shift in economic activities like as business, education, and the health-care system?

KEYWORDS: *Right to Clean Environment, Sustainability, EIA 2020, Right To Progress, Pandemic.*

INTRODUCTION

Despite India's rich environmental history, where the five elements of nature are revered as a means of praying to God, Mother Earth is under severe strain as a result of industrialization and overcrowding. Forest degradation, animal extinction, and air and water pollution are all issues that must be addressed. The mentality of exploiting the planet and devouring our environment was promoted as a result of migration and colonialism in European nations.

Humanity has gained power as a result of progress, but the environment has suffered much as a result. People should be taught the monetary worth of a healthy world in order to preserve the environment and achieve a balance between economic development and ecological preservation. Preventing the catastrophe will really assist our economic system avoid future hardship and will have good consequences such as enhanced health and quality of life, food and water security, and so on[1].

A supple economy's backbone is a healthy environment, which leads to long-term economic development. Covid-19 has changed the globe; it has had an impact on all aspect of our lives, including personal life, economics, and the environment, demonstrating how closely our economy and lifestyles are connected to the planet's general health. The world's setbacks in 2020 should be viewed as an opportunity to learn from and change the existing system, in which the environment was deteriorating at an alarming rate on a daily basis, and to move toward a sustainable plan in which business activities can be conducted in a responsive manner with less energy consumption, better public transportation, and better living conditions, as the increase in AQI Ind. As the present strategy solely strives for limitless development centered on individual wealth, undermining the environmental effects of economic activity would ultimately lead to humanity's demise.

There was a 5% drop in emissions during the first few months of the country's lockdown, with almost no vehicular movement and major industries shutting down, the lowest in over half a century. However, with the entire market closed, many daily wagers, domestic helpers, artisans, and non-essential item businesses were hit with unwanted suffrage. Those who make a significant contribution to the economy yet have the lowest salaries were left without food and shelter[2].

The migrant laborers who risked their lives while walking to their home villages will haunt our country for the rest of their lives. These little and transient adjustments are Mother Earth's way of giving us a taste of the enormous changes in lifestyle and economic structures that will be required if we are to avoid this issue. Also, this sharp decrease did not persist; as soon as the limitations were removed and all economic activity resumed, emissions began to rise again.

With everything on the line, the government is further weakening environmental regulation by implementing Environmental Impact Assessment (EIA) Notification 2020, allowing mining projects in areas with rich fauna and flora and construction projects in biologically fragile regions of the country.

LITERATURE REVIEW

The review's goal was to examine what other academics had done, to find gaps in prior research, and to contribute to filling those gaps. In Boyd (2011), the author discusses the recognition and inclusion of the right to a healthy environment in various countries, as well as the role of the judiciary in developing different interpretations of the right, whereas in the literature, Santosa (2005) and Sijapati (2013) discussed the international perspective of the right to a healthy environment, and Santosa (2005) compared the two ideologies, Gandhian (sustained) and Gandhian (sustained).

Nomani (2000) discusses the judiciary's involvement in bringing about a sea shift in environmental justice and extending conventional notions of justified privileges. These works discuss the international perspective of environmental jurisprudence and the evolution of the right to a healthy environment, but a gap in the literature was identified as to what the reasons are for the world's slow progress toward a sustainable future, and what can be done in post-covid times to make a real difference.

DISCUSSION

How Right To A Healthy Environment Is Being Develop?

Climate change poses a danger to the whole world's existence, therefore efforts to achieve sustainable development have grown critical and have become a transboundary problem. Many efforts were made in the nineteenth century to establish the right to a healthy environment in international environmental law, which was finally realized in 1972 at the United Nations Conference on Human Environment (Stockholm Conference). In the Stockholm Declaration, worldwide collaboration was called for in order to resolve

environmental issues. The 26 principles acknowledged the effect of human behavior on the environment, and a 109-pointer action plan was created. It was a good beginning point since it impacted legal and institutional development over the following several decades, bringing frameworks like the Law of the Sea into play. Articles 48 A and 51A of the Indian Constitution were also amended as a result of the Stockholm Conference (g). It also resulted in the passage of the Water Act of 1976, the Air Act of 1981, and the Environment Protection Act of 1986[3].

The Doctrine of Sustainable Development states that current generations' demands must be met without jeopardizing future generations' capacity to satisfy their own. There are two important ideas in it:

- The needs of the poorest members of society should be prioritized.
- Restrictions on resource usage should be enforced.

Developed nations must accept responsibility for their previous carbon emissions because they cannot stand on an equal basis with emerging countries, sharing equal obligations and obstructing their growth. The 'creative carbon accounting' is a method by which developing nations absolve themselves of responsibility by ignoring the gases released when imported products are manufactured in other countries, i.e., the emissions that their consumption produces in other countries. To see any positive improvement in the state of the environment, developed nations must not only stand shoulder to shoulder, but also take a larger step toward global sustainability.

Right To Progress Vs. Right To Life

Many countries acknowledged the right to a healthy environment after the Stockholm Declaration, with a few expressly including it in their national constitutions and others interpreting it via the courts. The Indian court has developed some procedures and concepts that prevent human rights abuses by relying on basic rights and fundamental responsibilities, which include the need to preserve and protect the environment.

According to different courts, the right to life protected by Article 21 of the Indian Constitution protects life and liberty, which includes the right to a healthy environment, quality, and pollution-free environment. However, the constitution does not include a right to maintain, promote, and embrace public involvement in environmental protection, nor does it provide an adequate tool for balancing exploitation with a protective environment. In the case of Rural Litigation and Entitlement Kendra V State of Uttar Pradesh, the Supreme Court emphasized the importance of EIA, stating that obstructing development activities that harm the environment will impede economic development, but that this is the price to pay for defending people's right to a healthy environment with minimal environmental disturbance[4].

Humans have a tendency to misuse natural resources without paying the environment (in terms of money); thus, preventive measures are urgently needed to reduce suffering. The compensation system is insufficient since giving temporary relief would ultimately concentrate on valuing human rights in terms of money rather than addressing the fundamental issue of environmental deterioration.

The conflict between the right to progress and the right to life must be seen holistically, since growth may improve millions of people's lives by giving work, but the planet cannot support infinite development, therefore such development is futile. Combining economic development with environmental protection and social fairness is the only way to achieve long-term sustainability. The Supreme Court decided in the case of Goa Foundation, Goa vs. Diksha Holding (Pvt.) Ltd that society should grow but not at the expense of the environment, and that the aim is to create a balance where both development and a clean environment may be achieved.

The World Health Organization (WHO) has emphasized that a healthy environment is an essential component of the right to life and health since environmental risk factors are directly responsible for about one-quarter of all illnesses worldwide. The current health crisis and the spread of zoonotic disease are a result of the economic cost of human development, which has disrupted the entire ecosystem through overexploitation of the common good, resulting in a "tragedy of the commons." As a result, all governments around the world should prioritize investments in planetary health. This epidemic is a smack in the face to the world's collective ego, demonstrating that improving air quality in our nation is a need, not a choice[5].

According to the International Monetary Fund (IMF), the world is set to enter its worst recession owing to economies shutting down for approximately 6-8 months. This scenario should not be used by government agencies as a justification to reduce environmental enforcement in order to boost economic development. It is critical to consider the lessons learned from the pandemic in terms of sustainability, waste management, and improved health infrastructure. Economic transitions such as the complete digitization of education, the introduction of telemedicine, changes in hospital management, and work from home for many industries should be viewed as opportunities to replace current unsustainable practices and move toward decarbonisation in order to recover from COVID.

Environment Impact Assessment (Eia) Notification 2020

One of the most effective developments in international environmental law is the Environmental Impact Assessment (EIA). The United States implemented the National Environment Policy Act (NEPA) in 1969, and for the first time, the Environmental Impact Assessment (EIA) was introduced, giving federal agencies the authority to monitor environmental decisions and prevent any development that would have a negative impact on the environment. Many other nations followed suit, and India produced its first EIA notice in 1994 under the Environment (Protection) Act, 1986, which restricted activities that had an impact on the environment in some manner. Since the development initiatives need to be approved by the Environmental Protection Agency. Several changes to the EIA have been made, either to make the procedure simpler for industrialists or to make these approvals more rigorous. As a result, it may be argued that EIA has been caught in the middle of the struggle between industrialists and environmentalists[6].

As a participant in the United Nations Conference on Human, Environment, and Development in Stockholm in 1972, the Rio Summit in 1992, and some of the key environmental accords such as the Paris Agreement and the Kyoto Protocol, India has an international responsibility to follow. India's dedication may be shown in its recent campaigns and national laws. The SDG Index 2020 measures how far all nations have progressed toward fulfilling the 17 SDGs. India has increased its score and shown significant progress in Goals 6, 7, and 9. As a result, weakening national law is incompatible with being a global leader in the battle against climate change.

Because the world is struggling with a worldwide health crisis and a severe economic downturn, the newly proposed draft 2020 becomes very essential. There has never been a more pressing need for India to become self-sufficient. However, implementing Atmanirbhar Bharat at the expense of environmental degradation is not a long-term answer, since damaging our ecosystem would only worsen our situation.

Analysis

The 2020 draft is fundamentally incompatible with the national framework, namely Article 48A of the Indian Constitution, which directs the state to protect and preserve the environment, as the government is clearly attempting to revive the economy by making the process of obtaining environmental clearance easier and encouraging industries to invest more in infrastructure. This will boost the flow of money into the economy, resulting in an

increase in employment. The EC procedure causes projects to be delayed for approximately 6 years, affecting the ease of doing business. With the country's present economic situation, all of these changes seem to be essential, but even if the goal is good, the methods to accomplish it would damage our environment[7].

The Supreme Court ruled in *Association for Environmental Protection vs. State of Kerala* that starting projects without obtaining environmental approval is a violation of Article 21 of the Indian Constitution, which guarantees the right to life.

The Supreme Court recently ruled in *Alembic Pharmaceuticals Ltd. vs. RohitPrajapati* that giving post-facto approval undermines the basis for environmental protection laws since EC are founded on the Precautionary Principle, and therefore knocked it down.

According to *Project Director, Project Implementation Unit vs. P.V. Krishnamoorthy*, previous Environment Clearance is needed before the actual building of the National Highway, not during the planning stage[8].

In the case of *Lafarge Umiam Mining Private Limited vs. Union of India*, the Supreme Court said that it is a necessary duty to voice any concern in an effective venue. In the case of *Costa Rica vs. Nicaragua*, the International Court of Justice has emphasized its importance. It is important to emphasize that in every democratic nation, the right to be heard is deeply rooted.

The recent case of the Vizag gas leak, which could easily turn into a repeat of the Bhopal gas tragedy, highlights the need to close existing loopholes and strengthen the EIA process. Because the primary cause of the incident was a weak EIA regime, the government informed the National Green Tribunal that the unit lacked environmental clearance, demonstrating the rules' ineffectiveness.

The proposed proposal defies the spirit of India's environmental jurisprudence. The government should make an effort to consider the interests of all stakeholders, and given the pandemic scenario, place a higher emphasis on developing more environmentally friendly regulations that are consistent with current standards[9].

CONCLSUION

The most significant impediment to sustainable development is the growth of 'Nationalism,' in which the mindset of 'us' versus 'them' increases resistance to cooperate as a global society. One of the grounds for the United States' withdrawal from the Paris Agreement is this. International treaties and accords point the way toward a less self-centered approach to environmental conservation and preservation. However, in order to have an effect on the environment, it must be enforced via national policy. Addressing climate change, which has become one of the most serious challenges to global economic stability, has become critical.

When economies reopen after months of lockdown, government and corporate leaders must address the rebound, which will result in an increase in pollution, by investing in a long-term recovery strategy that values nature rather than seeing it as a source of raw materials. According to the World Commission on the Economy and Climate, motivated climate action may produce \$26 billion in profits by 2030, while also generating 65 million new employment via a low-carbon approach.

REFERENCES

1. Katarina Zimmer, "A healthy environment as a human right," *Knowable Magazine*, 2021.
2. E. R. A. GOVERNANCE, "Six reasons why a healthy environment should be a human right," *UN ENVIRONMENT PROGRAMME*, 2021.
3. Deepanwita Sengupta, "Environmental Justice in Light of Right to grow in a Healthy Environment," *IPLADERS*, 2019.
4. Shruti Singh, "RIGHT TO LIVE IN A HEALTHY ENVIRONMENT: CLASH WITH

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INDIVIDUAL ECONOMIC RIGHT,” *Lex Humanit. J. a Chang.*, vol. II, no. II, pp. 81–92, 2021, [Online]. Available: https://drive.google.com/file/d/1kZyYbWFnDRuwdXUaRo_42YKHBWsNpofp/view.

5. Aayush Akar and Hitesh Gangwani, “Article 21: Right to Healthy Environment - An Interpretation,” *Latest Laws*, 2019, [Online]. Available: <https://www.latestlaws.com/>.
6. N. BintiHashim, “Constitutional Recognition of Right to Healthy Environment: The way Forward,” *Procedia - Soc. Behav. Sci.*, vol. 105, pp. 204–210, 2013, doi: <https://doi.org/10.1016/j.sbspro.2013.11.021>.
7. D. Shelton, “HUMAN RIGHTS, HEALTH AND ENVIRONMENTAL PROTECTION: LINKAGES IN LAW AND PRACTICE.” [Online]. Available: https://www.who.int/hhr/information/Human_Rights_Health_and_Environmental_Protection.pdf.
8. aditi singh, “Right to Clean Environment: A basic Human Right,” *Legal Service India*, 2021.
9. UN General Assembly Resolution, *The Right to an Adequate/Healthy Environment*. 2012.